162 US 291

TRANSCRIPT OF RECORD.

162-291

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 13.

AMOS WOODRUFF, TRUSTEE, AND THE GERMAN BANK OF MEMPHIS, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MISSISSIPPI; W. W. STONE, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF MISSISSIPPI; W. I. HEMINGWAY, TREASURER OF THE STATE OF MISSISSIPPI, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED NOVEMBER 22, 1890.

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1 Supreme Court of Mississippi. April Term, A. D. 1889.

Pleas and proceedings had and done at a regular term of the supreme court of Mississippi, begun and held in the court-room, in the capitol, in the city of Jackson, on the first Monday, the 1st day, of April, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Honorable James M. Arnold, chief justice, and the Honorable J. A. P. Campbell and the Honorable Tim. E. Cooper, associate justices; also Oliver Clifton, clerk of said court, in person and by his deputy, C. C. Campbell; W. C. Harrell, marshal, and Nicholas Francisco, porter.

Proclamation having been duly made, the court proceeded to the dispatch of business.

On the 29 day of March, 1889, there was filed in said supreme court a transcript of a record in words and figures as follows, to wit:

JACKSON, MISS., *Feb. 4th*, 1889.

Pleas and proceedings had and done before the Hon. Warren Cowan, chancellor of the fifth chancery district of Mississippi, sole presiding — in and for the first district of Hinds county, at the regular term of the chancery court for said district, begun and held in the chancery court room, in the city of Jackson, on the first Monday of February, A. D. 1889.

Present: Warren Cowan, chancellor; W. W. Downing, clerk; S. B. Thomas, sheriff.

In the Chancery Court of Hinds County, First District, State of Mississippi.

AMOS WOODRUFF, Trustee, *et al.*
v.
STATE OF MISSISSIPPI *et al.*
} Original Bill.

Complainants, Amos Woodruff, trustee; B. Richmond, and The German Bank of Memphis, a banking corporation under the laws of the State of Tennessee, bring this their bill against the State of Mississippi, W. W. Stone, auditor of public accounts, and W. L. Hemingway, treasurer, of the State of Mississippi; the Louisville, New Orleans & Texas Railroad Company, the Delta Pine Land Company, N. T. Burroughs, and all persons claiming to own lands within the bounds described in section 7 of an act of the Legislature of the State of Mississippi, approved March 17, 1871, creating the Mississippi levee board, district No. 1, and upon which any taxes due said levee board have accrued and are due under said act of 1871, and who are too numerous individually to be served the process herein, and, humbly complaining, would show unto your honor as follows:

1. That said defendant, Louisville, New Orleans & Texas Railroad

Company, under a statute of the State of Mississippi passed in 1882 was duly consolidated with the Memphis and Vicksburg Railroad Company and the Mississippi Valley and Ship Island Railroad Company, corporations created under the laws of the State of Mississippi, and whereby it became owner of all the property and franchises of the said corporations and was liable to pay all the debts of the said corporations and perform all their duties and satisfy all the liabilities thereof, and that said railroad company is a duly organized corporation under the laws of the State of Mississippi for the purpose of projecting a railroad through said State.

2. That the Delta Pine Land Company is a corporation dealing in lands in the State of Mississippi, organized under the laws of said State.

3. That the Legislature of the State of Mississippi, under
2 an act approved December 2, 1858, entitled "An act to aid in repairing and perfecting the levee of the Mississippi river in the counties of De Soto, Tunica, Coahoma, Bolivar, Washington, and Issaquena," created a corporation and authorized it to incur debts and liabilities, and for the payment of such debts and liabilities a uniform tax *in rem* of ten cents per acre per annum was levied by said act on each and every acre of land in the State of Mississippi lying east of the Mississippi river and north of the southern line of Issaquena county, west of the Yazoo and Tallahatchie rivers and confluence of the Tallahatchie and Coldwater rivers; thence north and west to the Little Tallahatchie, to the mouth of McIver's creek, in the county of Panola; thence north with the base of the hills skirting the bottom of the counties of Panola, Tunica, and De Soto to Horn Lake; thence west, meandering with said lake and the base of the same, to the Mississippi river, except lands held by the State in trust or otherwise and school lands now exempt from taxation, which tax shall be continued for the period of five years. It shall be payable annually on or before the first day of April in each and every year from the first day of April, 1859, to the first day of April, 1863, inclusive.

By section 2 of said act it is provided that it shall be the duty of the sheriffs of the several counties so taxed to collect said taxes thereby assessed within the time prescribed in the act—that is to say, the first amount due on or before the first of April, 1859, and annually thereafter until the whole should be paid—and said tax so levied by said act for the first 3 years was devoted to and payment made over to the board of police, while the balance was to be paid to the treasurer of the board of levee commissioners appointed under said act.

By section 3 of said act it is provided that the funds paid to the local authorities of Tunica, Coahoma, Bolivar, Washington, and Issaquena shall be specifically applied to the liquidation of the debts heretofore contracted or accruing under contracts entered into by the levee authorities of said counties respectively, and any excess thereof shall be appropriated exclusively under the direction of the general board of levee works of said counties. The funds to be denominated and used as a general fund up to that time shall be the

levee revenue derived from the counties of De Soto, Panola, Tallahatchie, Sunflower, and Yazoo.

By section 4 of said act it is provided that each and every sheriff charged under the direction of this act with the collection of the levee revenue shall, on or before the first Monday in January, 1859, enter into bond, payable to the State of Mississippi, with two or more good and sufficient securities, to — approved by the probate judge of the proper county, conditioned that he shall faithfully collect and pay over all monies as required under the provisions of this act. The bonds of the sheriffs of Tunica, Coahoma, Bolivar, Washington, Issaquena, and Sunflower shall each be conditioned in the penal sum of forty thousand dollars, while the bonds of the sheriffs of De Soto, Tallahatchie, Panola, and Yazoo shall be conditioned in the penal sum of twenty thousand dollars each, and in the case of the failure of any sheriff to execute the bond as aforesaid by the time aforesaid his office shall be vacated and the vacancy filled according to law, and in all cases the bond of the sheriff shall be recorded in the clerk's office of the probate court of the proper county, for which service the clerk shall be entitled to the usual compensation, to be paid out of the general levee funds.

By section 6 of said act it is provided that if the taxes therein levied shall not be paid, the land or a sufficiency thereof upon which the tax is levied shall be sold by the sheriff on the second Monday in April of each and every year to pay the same, and that a deed shall be executed to the purchaser, and if no person or persons shall bid the amount of taxes due on any tract of land when offered for sale as aforesaid such tract of land shall be struck off to the levee treasurer of the general board of commissioners, who shall be entitled to receive a deed therefor, executed to himself and his successors in office, which deed shall remain on file with the probate clerk of the county in which the land lies for the period of two years from the day of sale for redemption, saving to minors and persons *non compos mentis*, who shall have three years to redeem after they become of age or become of sane mind, said sale to be made on the second Monday of April in each and every year after the said tax may become due, which deed, said act provides, shall vest in said purchaser a full and complete title in fee-simple to the lands so sold, and said deed shall be taken and received in any court of justice as vesting a perfect title in the purchaser, and shall be evidence that the title of the owner or owners, as well as the claim of all persons interested therein, is thenceforward vested in the purchaser, and shall be *prima facie* evidence that the land was subject to the tax for the non-payment of which the same was sold, and that all the prerequisites of said sale had been complied with. The said sheriff may continue said sale from day to day until the whole of said land liable to sale shall be disposed of, and if no person or persons shall bid the amount of tax due on any tract of land when offered for sale as aforesaid such tract of land shall be struck off to the levee treasurer as aforesaid.

By section 7 of said act it is provided that the levee treasurer of the general board of commissioners shall have power to sell any

land struck off to him at private sale, provided he shall be able to obtain therefor the amount of the purchase-money, with all accruing taxes and costs, with ten per cent. per annum upon the whole amount from the date of the purchase, saving, however, the right of redemption to the owner or owners within two years from the day of sale upon the payment of the purchase-money, with all subsequent taxes due thereon, with fifty per cent. per annum interest upon the whole amount. This redemption may be made from the levee treasurer himself, and the said sheriff's deed shall be recorded and the title thereof vested in the levee treasurer and his successor in office to all the lands described in said deed, and when such vestiture shall accrue to such levee treasurer the land shall become the property of the general levee board and may be disposed of by the board of levee commissioners as they may by ordinance provide.

By section 14 of said act it is provided that said board of levee commissioners shall issue its scrip, payable at such period as they may stipulate, but not before the first of January, 1863, and in such denominations as they may see proper, but not to exceed in the aggregate the sum of half a million dollars, and that the tax assessed by said act and denominated a general fund should stand pledged for the redemption of said scrip, and that the proceeds of such scrip should be devoted to the debts and liabilities of the board created under said act.

That by section 15 of said act it is provided that said scrip at maturity shall be receivable for taxes going into the general fund.

That said board was created by said act with power to construct and repair levees along the Mississippi river within their district, for which the monies received as general fund in said act shall be expended, and that after the first day of June, 1861, said board shall assume all the liabilities of the different local authorities at that time remaining unpaid for levee work in any of said counties done and performed.

4 That an act was passed by the Legislature of the State of Mississippi in 1860 (Acts of 1859, p. 434) wherein it was provided that the sheriffs should pay all State and county taxes on lands that may have been struck off to the levee board, and such payment to be a credit to the sheriff with the treasurer of said board.

That by an act of the Legislature of the State of Mississippi approved January 21, 1861, the levee treasurer is required to collect the taxes on the sale or redemption of lands under said act of 1858, and the said act of 1860 requiring the sheriff to pay the taxes is repealed.

That by the act of the Legislature of the State of Mississippi approved December 20, 1861, it is provided that all State and county — upon lands bought by or that may be bought by said levee treasurer under said act of 1858 are suspended until the next meeting of the Legislature unless the lands are redeemed or are purchased, but nothing in said act shall be so constructed as to release said lands from the State and county taxes, but the same shall be charged up and properly accounted for, with interest, by said levee

commissioners; that the State and county taxes should be suspended only for the fiscal year of 1861.

That by an act of the Legislature approved January 25, 1862, said act approved December 20, 1861, was amended by providing that said levee taxes shall bear 8 per cent. interest, and that all money collected under section 21 of said act of 1858 shall be exclusively appropriated by the board of police of the several counties for constructing, building or repairing the levees laid off by the board of commissioners.

That an act of the Legislature of the State of Mississippi was approved February 13, 1867, entitled "An act to provide for the payment of all debts and liabilities contracted or assumed and all scrip or evidence of debt issued by the general board of levee commissioners organized under an act approved Dec. 2, 1858, and also for the payment of all debts and liabilities incurred or assumed by any county for work and labor done or material furnished prior to the first day of January, 1862, in any county included in the levee district created by the act of Dec. 2, 1858, aforesaid, and whether such debts and liabilities were incurred or assumed before the passage of the act aforesaid;" which said act is commonly called the liquidating levee act.

By section 1 of said act a uniform tax of five cents per acre per annum is levied and assessed on each and every acre of land in the counties of Tunica, Coahoma, Bolivar, Washington, and Issaquena and such part of De Soto as was included in the act of 1858, and a like tax of three cents per acre was levied and assessed on each and every acre of land lying in any other county included in said levee district included in said act of 1858, which tax shall be payable on or before the first day of May in each and every year from the first day of May, 1868, and shall continue until a sufficient sum is collected with which to pay off all debts and liabilities contracted or assumed and all the scrip or evidences of debt issued by the general board of levee commissioners, organized under the act approved December 2, 1858, and also to pay off the debts and liabilities incurred or assumed and all the scrip or other evidences of debt issued by the board of police or board of levee commissioners in the counties of Issaquena, Washington, Bolivar, Coahoma, and Tunica for work or labor done or material furnished prior to the first day of January, 1862, whether such debt or liability was incurred or scrip or other evidence of debt issued before or after December 2, 1858.

By section 2 of said act it is provided that said tax is declared to be a tax *in rem* upon the lands included therein, which lands shall be subject to sale without further assessment unless the tax thereon be paid on or before the first day of May in each and every year the same shall be sold, and such sale shall vest in the purchaser a good and valid title to said lands against any claims of every person having title thereto.

By section 3 of said act it is provided that the said tax shall be collected in the same manner and the lands which may be sold for the payment thereof shall be sold on the second Monday in May of each and every year in the same manner, and shall be subject to like

redemption as provided for the collection or sale of lands for taxes in the act of December 2, 1858, aforesaid, and the amendments thereto; which acts for the collection of the taxes herein provided for and for the sale of lands in payment thereof shall be made to apply and govern the collection of all taxes and sales of lands provided in this law in all respects when the same shall not be inconsistent with the provisions of this act.

By section 4 of this act it is provided that the sheriff in each county aforesaid shall enter into bond, with good and sufficient sureties, payable to the State of Mississippi, for the collection and payment of taxes herein assessed in like penalty and in similar conditions on or before the first day of January, 1868, and annually thereafter, as were prescribed for the execution of bonds in the act of December 2, 1858; which act and the amendments thereto shall be made to apply and govern the execution of bonds by such sheriffs and the performance of their duties under this act in all respects, for the non-performance of their duties shall be subject to like penalty, to be enforced as so prescribed — said act in the amendments thereto.

By section 5 of said act it is provided that a board of commissioners shall be appointed to liquidate the outstanding liabilities incurred prior to the first day of January, 1862; that said board was at its first meeting, on the first Monday of March, 1867, to make an order requiring the persons who may have any claim or demand of any kind alleged to be due, and the payment of which is provided for in said act, to present such claim or demand to the secretary of said board on or before the first day of June, in the year 1867, at such place as may be designated in said order for the purpose of having the same registered, and all claims or demands not so presented shall be forever excluded from participation in the benefits of this act and their payment out of the moneys collected under its provisions. It shall be the duty of the secretary as soon as the same can be done, in books to be kept for that purpose, to register all claims so presented, together with the name of the party presenting the same, and also the amount of such claim and the name of the party claiming to be the owner thereof, and also the amount of said claim and the date when the same was presented.

By section 6 of said act it is provided that it shall be the duty of said board to examine into the validity of all claims and demands so presented as above, hearing any evidence that may be adduced relative thereto, and such claims or demands as may be disproved shall be marked "disapproved" by the president of said board, and being so marked the owner thereof shall not be entitled to the benefits of this act or to receive payment thereof out of any money collected under it. All claims which shall be found valid and shall be approved by said board *and* shall be marked "approved," and being so marked the owner thereof shall be entitled to the benefits under said act and the payment of the same out of the monies collected under it upon the terms that he shall remit the interest which may have accrued on such claim up to the first of June, 1867, and shall surrender such claim to be cancelled, and shall accept in lieu
6 thereof bonds of said board, payable in one, two, three, four,

and five years, with interest thereon, at the rate of five per cent. per annum, from June the first, 1867, until the same shall have been paid.

By section 8 of said act it is provided that the monies collected under said act shall be paid to the treasurer of said board, who shall hold the same for the purposes of paying the bonds issued as aforesaid and such incidental expenses as may occur in the management of the board.

By section 9 of said act it is provided that all the books, deeds, obligations, contracts, etc., of every kind whatever belonging to the board under said act of 1858 shall be delivered to the board created by said act. The power of sale of all the property belonged to said board under said act of 1858 is vested in said commissioners under said act.

By section 13 of said act it is provided that if at a sale of any land for taxes under the provisions of this act the amount of taxes due thereon be not bid, the same shall be struck off by the sheriff to this board, who shall hold the same subject to redemption in the manner before stated; and if not redeemed the same may be sold and disposed of, and the money used and applied in the manner above specified relative to the bonds belonging to the general board of levee commissioners aforesaid, and all the lands acquired by this board under this provisions of this act, or which belonged to the general board of levee commissioners as aforesaid, shall be exempt from State taxation for levee purposes or otherwise until the same shall be sold or disposed of by this board: Provided, however, that any party seeking to redeem any lands struck off to this board under the provisions of this act shall, before he is permitted to redeem the same, pay all State and county and levee taxes that would have been due on said land if the same had not been struck off to such board but had remained the property of the person offering to redeem; and it shall be the duty of the president of this board, on receipt of any such taxes, forthwith to pay the same to the party entitled thereto.

By section 14 of said act it is provided that if after the payment of all bonds issued under this act there shall remain any money in the treasury of this board, or shall remain any lands or other property belonging to them under this contract as aforesaid not sold, such money and property shall be under the control of the Legislature, to be applied in such manner and to such uses as it may direct.

By section 18 of said act it is provided that said act take effect from its passage, and that all other acts prescribing other modes of payment of the indebtedness herein provided for be repealed.

Complainants state on information and belief that the said board of liquidating levee commissioners was organized under the act of 1867, as therein provided, and made the advertisement required by said act for all persons to present their claims for registration; that a register of claims under said act was kept, and the same shows that there was no "date of presentation" of said claims marked thereon, and said register shows that on November 12, 1867, and

subsequently thereto there was registered an amount of claims aggregating the sum of $668,738.30, which were called the "old series," and bonds of said board under said act of 1867 were issued by said board for said sum; that none were registered before November 12, 1867.

That an act of the Legislature of the State of Mississippi was passed, approved March 17, 1871, entitled "An act to redeem and protect from overflow from the river Mississippi certain bottom lands herein described," by which it was enacted as follows:

By section 1 it was provided that a board of commissioners, to be styled the levee board of the State of Mississippi, district No.
7 1, to consist of five members, one of whom shall reside in each of the counties of Tunica, Coahoma, Tallahatchie, Panola, and De Soto, shall be elected by the board of supervisors of their respective counties, and they and their successors in office shall constitute, and are hereby declared to be, a body politic and corporate by the name and style aforesaid, and by said name may sue and be sued, plead and be impleaded, contract and be contracted with, and have perpetual succession for the purposes hereinafter designated.

That said board of district No. 1 should have power and are required by said act to repair and maintain a levee on the east bank of the Mississippi river, extending from the base of the hills on or next said bank of said river in the State of Tennessee, or to the base of the hills at any convenient point in the county of De Soto, to the southern boundary of the county of Coahoma, as provided for in said act.

By section 7 of said act it is provided *that* "that of all the bottom lands lying and being in that certain district of country bounded and described as follows—to wit, beginning at the point where the line of said levee intersects the Tennessee line, thence southward with the line of said levee to the southern boundary of Coahoma county; thence with the said last-named boundary line to the southern boundary; thence east with said last-named boundary line to the point at which said line intersects the range line between four and five west; thence south with said line to the southern boundary of township twenty-two; thence east with the township line to the point at which said line intersects the southeast corner of Tallahatchie county; thence with southern boundary of Tallahatchie county to the highest flood line on the base of the hills or second bottom lands, to the southern boundary of the State of Tennessee, at the point where that boundary is intersected by the highest flood lines of the Mississippi river; thence along said flood line to the place of beginning, said district embracing, besides the lands in the counties of De Soto, Tunica, Coahoma, Tallahatchie, and Pontotoc, six townships in the county of Sunflower, namely, townships twenty-two, twenty-three, and twenty-four of range three west, and townships twenty-two, twenty-three, and twenty-four, range four west—shall be and constitute, as aforesaid, Mississippi levee district No. 1, which it is the purpose of this act to protect and reclaim as aforesaid by the agency of said board of commissioners; and the

lands embraced and included in said levee district shall be and are hereby declared and are made chargeable and liable, as hereinafter declared, for all the costs, outlays, charges, and expenses to be incurred or made for the levees, works, and improvements provided for and contemplated by this act or in maintaining the same."

By section 8 of said act it is provided that for the purpose of building, constructing, repairing, and maintaining the levees and works aforesaid and for carrying into effect the object and purposes of this act a uniform charge and assessment of two per cent. per annum on the value of every acre of unimproved and improved land and cultivated land in said levee district is hereby fixed, levied, and made, which shall continue and be collected in each and every year for the period of twelve successive years from the date of this act, and shall be due and payable annually on or before the first day of September in each year for said period, and the valuation of every acre of unimproved land so taxed is hereby fixed for the purposes of this act at five dollars, except Sunflower and Tallahatchie counties, which shall be three dollars, and every acre of improved and cultivated land at thirty dollars, except Sunflower and Tallahatchie counties, which shall be twenty dollars, and every acre of land improved and fenced, which shall not be cultivated, at fifteen dollars, except
8 in Sunflower and Tallahatchie counties, which shall be ten dollars per acre: Provided that as soon as such unimproved lands shall have been improved and such uncultivated lands shall have been put in cultivation in any year the same shall be valued for the purposes of this act at thirty dollars per acre, the intention of this act in its exercise of the taxing power being that every acre of land cultivated in any year during the period of taxation shall be valued at the maximum assessment and made liable to taxation accordingly; and in all assessments made the lands described as cultivated shall be held to be such when a crop shall have been pitched thereon or the same shall have been used in anywise for production or for any other use in the year for which the assessment shall be made.

By section 9 of said act it is provided that for the purposes aforesaid and to enable said board to carry out the purposes of this act the said board of levee commissioners shall have power to borrow money, and to that end may issue the bonds of said board to the amount of one million of dollars in such sums and denomination, not less than one hundred dollars each, as the said board may prescribe, which bonds shall be signed by the president and countersigned by the treasurer of said board and be made payable to order or bearer in not less than two nor more than ten years after the first day of January, 1871, and shall bear a rate of interest not exceeding eight per cent. per annum, for which interest coupons may be attached, payable at such time and place as the board may contract. Said bonds shall be negotiable as promissory notes or bills of exchange and may be sold or negotiated in any market in or out of the State on the best terms that can be obtained for the same, but in no case shall any of them be negotiated or sold at a greater discount than ten per cent. Said bonds or coupons shall be receivable after ma-

turity at par in payment of any charge or assessment fixed, levied, or made by this act. All the monies borrowed by said board or arising from negotiation or sale of any of said bonds shall be promptly paid into the treasury of said board and shall constitute a levee fund and shall — used and applied to carry into effect the objects and purposes of this act.

By section 10 of said act it is provided that the charges and assessments fixed, levied, and made as aforesaid by this act shall be, as they are from time to time collected, and they are hereby, constituted a special fund and trust to be used by said board, first, in payment of any bonds that may be sold or used, as before provided under this act, and of any money that may be borrowed under its provisions; secondly, for the payment of any other debts or liabilities of said board, and when collected the same shall be paid in the treasury of said board for the purposes aforesaid. Said charges, assessments by this act fixed, levied, and made as aforesaid on said lands, shall not be subject to repeal, alteration, or suspension during the time for which they are fixed, levied, and made as aforesaid until all the bonds, obligations, and liabilities of said board shall be first paid and discharged; and should any of said charges and assessments not be collected as herein provided, then the holders of any bond or obligation of said board which may be due and unpaid may apply to the judge of the circuit court or of the chancery court of any district included in the levee district for a mandamus directed to said board, by which mandamus said board shall be ordered and compelled to proceed to have collected and paid over said charges and assessments as herein provided, or instead of said mandamus the said judges may, in their discretion, appoint one or more special commissioners, with authority to collect and pay over such charges and assessments and for the collection of said charges and assessments. The said commissioners so appointed shall have all
9 the powers given by this act and shall proceed in the same manner as by this act prescribed to the collectors of said board for the enforcement and collection of the same.

By section 12 of said act it is provided that in case the owner or owners of any land in said district and any person interested therein shall fail to pay the said charges and assessments by this act levied thereon at or before the time when the same shall become due as aforesaid it shall be the duty of the tax collector to proceed without further assessment, demands, or notice, on the second Monday in January in each and every year after such charges and assessments become due as aforesaid, to sell at public auction, to the highest bidder, for cash, at the door of the court-house of the county in which the land is situated, the said lands or so much thereof as may be necessary to pay the said charges and assessments due thereon, with fifteen per centum damages thereon, and all costs of conveyance to the purchaser, and shall execute to the purchaser at such sale a proper deed, duly acknowledged and stamped if necessary, conveying the lands so sold to such purchaser, which said deed shall be taken and received in all courts as vesting in such purchaser a perfect title in fee simple, and shall be evidence that the title of the

owner or owners of such lands, as well as the claims of all persons interested therein, is thenceforward vested in such purchaser, and shall be *prima facie* evidence that such land was subject to the charges and assessments for non-payment of which it was sold, and that all things necessary to be done before such sale in order to render the same legal and valid had been in due time done; that said collector may continue said sales from day to day until all the lands liable to sale shall be disposed of; and if no person or persons shall bid for any land the amount due and payable thereon for such charges and assessments, damages and costs, when the same is offered for sale as aforesaid such land shall be struck off for said amounts to the treasurer of the said board of commissioners, and such tax collector shall execute a deed conveying the same to said treasurer and his successors in office in fee simple for the use of said board, and such deed shall have like force and effect and be evidence of a full and perfect title to the same extent and in the same manner as other deeds executed under the provisions of that section of this act. All deeds executed by such collectors shall remain on file in the office of the treasurer of said levee board for a period of ten years from the day of sale or of the execution of such deed unless the land is sooner redeemed, as hereinafter provided; but all minors and persons *non compos mentis* shall have two years to redeem after they become of age or become of sound mind upon paying the amount for which such land was sold and all subsequent taxes, charges, and assessments due thereon, with interest at the rate of ten per cent. per annum thereon from the time the same severally became due until the date of redemption, and twenty-five per cent. damages.

By section 13 of said act it is provided that the treasurer of said board of commissioners and his successors in office shall have the power to sell at private sale any of said lands conveyed to him as aforesaid, provided he can obtain therefor in cash the amount of the purchase-money, with accruing taxes, damages, assessments, and costs, with ten per centum per annum thereon from dates when due until paid, but the collector's deed therefor shall still remain in the office of the said treasurer as aforesaid, and the owner or owners of any lands so sold by such collector and any person interested therein may, in person or by agent or attorney, apply to said treasurer at any time within two years from the date of such collector's sale or the date of such deed, and redeem such land upon the payment of the purchase-money and all subsequent taxes, charges, and assessments due and unpaid thereon, with interest at the rate of twenty-five per centum thereon from the time when due until the date of redemption. Such redemption may be made from the treasurer of said board, and his receipt shall entitle the person redeeming to have cancelled the collector's deed, and if any of the lands sold by such collector are not redeemed or sold within two years, as herein provided, the collector's deed for such land shall be recorded in the office of the chancery clerk of the county in which such land lies and shall vest permanently, without further right of redemption except to minors and persons *non compos*

mentis as aforesaid, the title to such land in the treasurer of said board or his successors in office, in the person or persons who may have purchased the same, or in the person to whom the same may have been transferred, as the case may be. When such land may be so vested in the treasurer of said board the same shall become a part of said levee fund and may be sold as said board of levee commissioners may order. All monies not belonging to said board that might be received by its treasurer for redemption of lands as aforesaid shall be accounted for and paid over, on demand, by said treasurer to the person or party authorized or entitled to receive the same.

By section 17 of said act it is provided that if it should appear to the said board of levee commissioners that the proceeds of said charges and assessments fixed as aforesaid by that act will exceed the amount necessary to pay off and discharge the bonds, with accruing interest, that may be issued under that act and also all other indebtedness and liabilities that may be incurred by said board under the provisions of this act, then said board may reduce or suspend in part the collections of said charges and assessments, but a sufficient amount thereof shall be regularly collected to pay off all such bonds, indebtedness, and liabilities, with all interest, and such reduction or suspension shall in nowise prejudice the rights of the holder of any such bond or any other creditors of said board. Should any — hold an overdue bond it shall be his right, the holder of such bond or other creditor, to insist on and enforce the collection of the whole of the charges and assessments herein made if necessary to the payment and discharge of the bonds, coupons, or other debt or liability of said board.

By section 20 of said act it is provided that no part of said levee fund or the moneys of said board shall at any time be loaned or used in any manner except as prescribed by this act, but that said board may, and it shall be its duty to, invest and keep invested in public securities of the United States until required to pay any of the bonds or liabilities of said board *and* all such part of the funds and money of said board as may not at any time be required for present use in paying the matured debts and liabilities of said board or in carrying into effect the purposes of this act.

By section 21 of said act it is provided that said board was required to keep a record of all its acts and proceedings and to furnish a full and detailed report in the month of January of each year of all the acts and doings of said board, the condition of the levees, the work done, the amount received, the amount disbursed, and the engagements, debts, and liabilities of said board and the condition of its affairs, and said board shall be subject to the supervision of the Governor of this State or the Legislature thereof.

By section 23 of said act it is provided that if the charges and assessments therein fixed, levied, and made shall be adjudged and held in*operation* (operative), then the said board of levee commissioners shall have power, and are thereby required to proceed im-
11 mediately, through five commissioners to be appointed by said board for that purpose, to have just and legal rates, as-

sessments, charges, or taxes levied and made on all lands in said levee district or on either, as may be lawful, sufficient in amount when collected year by year, as contemplated by this act, to pay all such bonds, loans, debts, and liabilities and enable said board of commissioners to carry into effect the provisions of this act.

Section 24 of said act provides that the collection of all State and county taxes which have been or may hereafter be assessed upon any lands that may be purchased for or invested in said levee board, as provided for in this act, shall be, and the same is hereby, suspended so long as such lands are held as assets of said board. Said lands shall not by anything herein be relieved from taxes, but the same shall be charged up properly and accounted for, with interest, by said board when such land is purchased or redeemed from them.

By section 27 of said act it is provided that no lands held by the United States or this State, in trust or otherwise, nor any Chickasaw or other school lands, if exempt from taxation, shall constitute part of the levee district established and created by said act; but such of said lands as are situated within the general boundary of said levee district as fixed by this act shall become and constitute part of said levee district as soon as they become subject by law to taxation, and then such lands shall become and be subject and liable to said charges and assessments fixed, levied, and made by this act, and collections of the same shall thereafter be made as prescribed for such collections by this act.

By section 28 of said act it is provided that every tax-payer within the levee district shall be, and is hereby, required to file with the levee tax collector of said county a statement, under oath, setting forth the number of acres of land which he owns or represents and on which he is chargeable under this act, the number of acres cleared and uncleared, the number under fence, and the number under cultivation; that this statement shall be filed, as provided, on or before the first day of September in each year, beginning with the first day of August, 1871; that in case of failure to so file it he shall be held taxable to an extent of twenty-five per cent. in addition to the amount of taxes which he would have been liable under this act.

By section 29 of said act it is provided that all taxes levied and assessed under this act be, and the same are, declared to be a tax *in rem* upon the lands embraced therein, which lands shall be subject to sale without further assessment on or before the day of sale of the same in each and every year, whether the owner has personal estate subject to taxation or not, and such sale shall vest in the purchaser a good and *valued* (valid) title to the same lands against every person whatever having claims or title thereto, subject to redemption as hereinbefore provided.

By section 32 of said act it is provided that all acts in conflict with the provisions of this act be repealed, and that this act take effect from and after its passage.

Complainant states that the construction of levees by levee district No. 1 was necessary in order to protect from overflow of the Mississippi river all lands embraced in the liquidating levee district; that under said act of March 17, 1871, said commissioners of dis-

trict No. 1 were duly elected and organized, and under and by virtue of the provisions of said act said Mississippi levee board of district No. 1 executed, as therein directed, divers bonds of different numbers and amounts, due and payable at different dates up to 1882, one of which is in the following form, and the others are in the same form with the exception of the dates, numbers, and amounts:

12 "A.

No. 309. $1,000.

Mississippi levee district No. 1.

UNITED STATES OF AMERICA, *State of Mississippi.*

Eight Per Cent. Bond.

One of a series of five hundred bonds of one thousand dollars each, numbered from one to five hundred consecutively, issued by the levee board of the State of Mississippi, district No. 1, in pursuance of and by the authority granted in an act of the Legislature of the State of Mississippi, approved March 17th, 1871, entitled 'An act to redeem and protect from overflow from the River Mississippi certain bottom lands herein described.'

Know all men by these presents that the levee board of the State of Mississippi, district No. 1, under and by authority of the law mentioned in the caption hereof, hereby acknowledge themselves, for value received, indebted to the bearer in the sum of one thousand dollars in gold coin of the United States of America, which said sum the said levee board of the State of Mississippi, district No. 1, for themselves and their successors, do hereby bind themselves and engage well and truly to pay to the bearer on the first day of January, A. D. 1878, at the banking-house of the National Park Bank, in the city of New York; and the said the levee board of the State of Mississippi, district No. 1, for themselves and their successors, do hereby engage to pay an interest thereon of eight per centum per annum, payable semi-annually on the first days of January and July in each and every year ensuing the date hereof until the maturity and payment of this bond, at the place of payment mentioned in the coupons hereto annexed, upon the delivery of said coupons as they severally become due.

In testimony whereof the president of the levee board of the State of Mississippi, district No. 1, has signed and the treasurer [SEAL.] of said board has countersigned these presents, and the president has caused the seal of the said board to be affixed hereto the first of January, in the year of our Lord one thousand eight hundred and seventy-two.

(Signed) M. S. ALCORN, *President.*

(Signed) A. R. HOWE, *Treasurer.*"

Upon which said bond is printed as an endorsement sections 7, 8, 9, 10, 20, and 29 of said act of 1871. Attached to said bonds were

coupons, of which the following is the form, all being alike except in amounts, number, and maturities:

"The levee board of the State of Mississippi, district No. 1, will pay to the bearer on the first day of January, 1879, at the National Park Bank of New York, twenty ($20) dollars in currency of the United States, being the semi-annual interest on bond No. 52.

(Signed) A. R. HOWE, *Treas.*"

Which said bonds and coupons were negotiated by said district No. 1 and in course of trade came into the hands of these complainants by delivery. The list of said bonds and coupons held by each of the complainants is herewith filed, marked Exhibits A, B, & C, and the bonds and coupons therein recited are subject to the
13 order of the court and will be filed herein whenever required by the court, the same not being deposited now for fear of loss and by reason of their value. Said exhibits show the date of the maturity of said bonds and coupons, and the same are made part of this bill as if specifically copied herein; that the face of said bonds amounts to about $300,000 and the interest accrued to about the same sum.

Complainant states that the Legislature of the State of Mississippi passed an act amendatory of said act of 1867, which was approved on May 13, 1871, whereby the time for the presentation of claims, as provided for in said act of 1867, was extended to the second Monday of November, 1871, and all claims presented before said last-named date and which were allowed by the levee commissioners should receive the benefits of the act of 1867, upon the terms stated in said act of 1867; said bonds to be issued under said act of May 13, 1871, to be styled "new series," and the same were by said act declared to be receivable for taxes in the same manner as said bonds issued under the act of 1867, and the said taxes levied by the said act of 1867 was extended to include within its benefits the said bonds to be issued under the said act of May 13, 1871.

Complainants state that at the time of the passage of said act of May 13, 1871, all the presented claims which it purports to cover had long since been barred by the statute of limitations provided by said act of 1867.

That under said act of 1871 there was issued of said new series of liquidating levee bonds $254,586.65, and subsequently there was issued of said new series of said liquidating levee bonds $20,340.00.

That by section 9 of said act of May 13, 1871, it is provided that all claims not presented within the time limited by said act shall be forever barred.

That the Legislature of the State of Mississippi passed an act amendatory to said act of May 13, 1871, approved April 5, 1872, whereby the time for the registration of claims under said acts of 1867 and May 13, 1871, was extended for a period of one year from the passage of said act.

Complainants state that under said act approved April 5, 1872, a large amount of said liquidating bonds were issued.

That the Legislature of the State of Mississippi passed an act amendatory of said act of 1867, approved April 10, 1873, whereby it was provided that the taxes levied by the act of 1867 be payable on the same day as State taxes, and that all deeds be deposited with the commissioner, and that the time for redemption shall date from the deposit of such deeds *from* him; that after the period for redemption has expired the commissioner shall have the deeds recorded.

That by section 4 of said act it is provided that it shall be the duty of said commissioner to ascertain what sales of land, if any, within the levee district aforesaid for the levee taxes due thereon and unpaid have been improperly made, and in all such cases and all cases when delinquent lands have not been sold he shall have power, and it is hereby made his duty, to order and require the sheriffs of the several counties included in whole or in part within said levee district to make sales of all such lands upon which the taxes have not been paid at the next succeeding sale day after the passage of this act or at some other day, as provided by law, and all such sales made as aforesaid shall be binding and valid to all intents and purposes; that all sales heretofore made within the purview of this section under the direction of said commissioner shall be as effectual to pass title as if made in accordance with the law, and no irregularity in the mode of offering or selling any
14 lands delinquent for the taxes levied thereon by the said act of 1867, as to the place of sale or of the filing or execution of deeds or any other informality or irregularity, shall in any manner defeat or impair the lien upon lands sold for non-payment of the levee tax levied thereon as aforesaid, as well as the State and county taxes suspended thereon according to law. The deeds conveying lands sold or struck off to the said commissioner or purporting to convey them shall have like force and effect *or* mortgages upon said lands executed by the owner thereof and shall operate to secure all of said taxes, with the statutory damages thereon, which shall attach in all cases of non-payment of levee tax, and may be foreclosed as any other mortgages by the said commissioner or those claiming under him. No plea of payment of the State or county taxes upon said lands after the same has been struck off to said commissioner or his predecessors in office shall be allowed unless the party urging it shows that the levee tax for the year in which said lands were sold had been paid in fact; nor shall any bill to remove any tax title held by said commissioner or formerly held by him or his predecessors in office as a cloud upon the title of the owner or party claiming any lands struck off or sold to said commissioner or his predecessors in office be entertained unless the party complaining shall render with his bill, in currency, the full amount of all taxes in arrear upon his land, with ten per centum interest thereon from the several dates at which the said taxes became respectively due and payable, or shall allege and prove a payment of all such taxes.

By section 8 of said act it is provided that the auditor of public accounts shall annually submit to the said liquidating levee commis-

sioners, to be examined and approved, all lists of lands presented by the sheriffs of the several counties within said levee district for suspended State and county taxes before a credit on account shall be allowed by him therefor to any of said sheriffs, and shall file with said commissioner duplicates or copies of all such lists. The auditor of public accounts shall also furnish the levee commissioner, as soon as practicable after the passage of this act, a certified copy of all lands in the several levee counties on which State and county taxes have been suspended for the fiscal years 1867, 1868, 1869, 1870, and 1871.

That by an act of the Legislature of the State of Mississippi, approved April 6, 1874, entitled "An act to further amend An act to quiet tax titles and increase the revenue of the State," approved April 4, 1872, and the amendment thereto, approved April 5, 1873, "to enforce a more perfect system of accounts with lands delinquent for tax, and for other purposes," it was provided that thereafter all lands which have been or which may be forfeited to and held by the State for taxes shall be assessed at their full value in the name of the State and be borne on the assessment-rolls the same as lands belonging to individuals, except that no tax shall be extended against them, and that the circuit clerk of each county shall make up a list of lands held by the State and furnish it to the auditor of public accounts and the tax collector.

By section 6 it is provided that the tax collector of the counties embraced in the several levee districts of this State shall make out separate and proper lists of all lands held by the several levee boards respect*fully* delinquent for State, teachers' fund, and county taxes, and shall in proper column give the date of said sale of said lands to said levee boards, which list shall be examined and certified by the circuit clerk that he holds none of said lands in his office on account of any sale to the State previous to the sales made to said levee boards, which roll shall be examined and verified by
15 the clerk of the chancery court, and the chancery clerk shall make triplicate copies of said list, one for each of the levee treasurers or commissioners and for the auditor of public accounts and the county treasurer. Said list shall be examined and approved by the levee treasurers or commissioners of the proper boards, and the tax collectors upon final settlements shall receive credits for the State, teachers' fund, and the county taxes so suspended for collection. The levee treasurer of the proper boards shall be charged with said tax by the auditor of public accounts and county treasurers. Said levee treasurers shall make out lists and apportion such parts of the same as may be subject to redemption through the office of the chancery clerk, who shall be charged by the said levee treasurer with the same on individual account with the said levee treasurer. The board shall keep account with said levee treasurer separately.

And by section 7 of said act it is provided that, in order to keep a more perfect system of account with the several levee boards in this State for taxes "suspended" with said board for collection and under the several acts now in force in relation thereto, the auditor

of public accounts shall have prepared record books in proper form and column, to wit, date of sale to board, description of land, columns of blank years, State tax, total interest and aggregate and columns and blank years, teachers' fund, interest, total teachers' fund and total interest, columns of blank years for county taxes, interest, total county taxes and total interest, aggregate, and space for remarks or redemption, &c., which said list of suspended taxes, after proper revision, approved in final settlement with the tax collectors, shall be recorded by the auditor's delinquent land department, chancery clerks, and levee treasurers respectively, said records to be continued by said officials for all subsequent lists of additional lands, recording in proper column of year all teachers' fund and county taxes suspended on such lands and sales as were previously recorded therein while said lands remained on record unredeemed from said boards; and the chancery clerk of each county embraced in the several levee districts shall make a monthly report of said suspended levee tax collected by him in the redemption of lands; and the levee treasurer of said board shall make out quarterly reports in full to the auditor of public accounts and county treasurers of all such "suspended taxes" collected by them or chancery clerks in account with said treasurers and pay the same to the State and county treasurers respectively.

And by section 8 of said act it is provided that upon redemption or sale of any lands held by the State or the levee boards for taxes the circuit clerks and chancery clerks shall collect all State and county taxes levied for the current fiscal year, and the levee treasurer and commissioner shall collect all State and county taxes for the current fiscal year on lands held by their respective boards. From the 15th of December in each and every year it shall be the duty of circuit and chancery clerks, levee treasurers, or commissioners to enter up all taxes, State, teachers' fund, and county, levied for the current fiscal year in their proper records and columns as hereinbefore provided for in sections 2 & 5 for circuit clerks and sections 6 and 7 for chancery clerks, levee treasurers, and commissioners; and the levee treasurers, commissioners, and chancery clerks for the several counties of the levee district shall, on the fifteenth day of December of each —, furnish the tax collectors of said counties full, complete, and proper lists of lands which may have been redeemed or purchased from them during the preceding twelve months, giving the date of sale to said levee boards, date of redemption or sale, name of the owner or purchaser, description of land properly credited to, and said lists shall embrace all lands which have been redeemed or purchased since the fifteenth day of December of the preceding year, with separate columns for State, teachers' fund, county, or other taxes for the current fiscal year charged up, and the said tax collector shall immediately list said lands to the owners or purchasers thereof and proceed to collect the taxes for the current fiscal year thereon.

By section 9 it is provided that the provisions of section 7 of an act entitled "An act to quiet tax titles and increase the revenue of the State," approved April 5, 1872, and the revision of section 6 of

an act supplemental and amendatory thereof, approved April 7, 1873, be, and the same are hereby, extended and amended so as to include the treasurers of the levee boards and the chancery clerks who shall take up the receipts of tax collectors who may have collected State, teachers' fund, county, or other taxes and claimed and recorded credits on account of State, teachers' fund, county, or other taxes suspended on said lands in their final settlements with the auditor or county treasurer.

That by section 10 it is provided that the auditor shall keep duplicate land rolls and records for delinquent taxes on lands in the land department of his office, showing all lists of delinquent taxes and lands as aforesaid and taxes suspended with the levee boards for collection and reports of redemption and sales made by said circuit clerks and levee treasurers.

That by an act of the Legislature of the State of Mississippi, approved April 2, 1874, entitled "An act to provide for the abatement of taxes accrued upon lands sold to the State prior to the year 1866, and for other purposes," it was provided that the taxes accrued prior to the fiscal year 1866 upon all lands forfeited to or purchased by the State for taxes prior to the fiscal year of 1866 are abated, and that all such lands as are held by the State until the first Monday of February, 1875, be subject to redemption by the owners upon the payment of the taxes accrued from 1866 to 1874, inclusive, with interest, and that upon such payment the circuit clerk shall execute a deed to such party.

That an act was passed by the Legislature of the State of Mississippi, approved March 1, 1875, commonly called the "abatement act," whereby it is provided that all taxes due to the State of Mississippi prior to the taxes for the fiscal year 1874 upon all lands claimed as forfeited to or purchased by the State of Mississippi for taxes be abated, and that all State, teachers' fund, and county taxes suspended for any year prior to the fiscal year 1874 upon lands which are held or claimed by any one of the three levee boards under sales or forfeitures for taxes are abated and such lands released from any further charge or accountability therefor; that the current fiscal year of the liquidating levee district now ending May 1, 1875, and the current fiscal year of the levee district embracing the counties of Washington, Bolivar, Issaquena, and portions of Sunflower, ending March 1, 1875, and also that of levee district No. 1, if not already so provided by law, be changed so as to end with the 31st of December, 1874, and on the same day of December for all future fiscal years until otherwise changed by law; that all lands theretofore held or claimed for taxes either by the State or any one of said three levee boards are thereby declared to be liable for the taxes of 1874 alone to January 1st, to wit, State taxes, teachers' fund taxes, and county taxes for the fiscal year 1874, and likewise for the taxes of the three said levee boards for the fiscal year 1874, and that the tax collectors throughout the State shall immediately proceed to collect such taxes for the fiscal year 1874 without
17 damages; and it is further provided by said act that if the taxes thereby levied shall not be paid that the tax collectors

shall proceed to sell on the 2nd Monday in May, 1875, and from day to day, all of the said lands until the said tax collection shall be ended; that the assessment-roll and value of lands thereon for the year 1874 is declared to be the value of such lands for the ascertainment of taxes due thereon; and it is further provided that if at such sale there *is* no bidders for the lands at the amount of all the taxes due for the fiscal year 1874 the same shall be struck off to the State by the tax collector, and a conveyance or list thereof shall be made by the tax collector to the State, and that the auditor of public accounts shall hold such lands so conveyed after the period of redemption has expired, subject to purchase upon the payment of the taxes and costs as well as the taxes accrued for subsequent years and interest due from the date of sale, and that upon a sale or redemption the auditor shall, after the 15th day of December, collect the accruing taxes of the current year; and it is further provided that for all lands or other real estate sold to the State for the non-payment of taxes for any current year the lien of the State on said lands and taxes belonging to the State, teachers' fund, and county taxes of the three said levee boards for all subsequent current-year taxes due said parties shall not be impaired while said property remains unredeemed or purchased from said sale for taxes by gift, demise, sale, alienation, or any means whatever, and any deed of gift, demise, sale, alienation, mortgage, or any other means of hypothecation or alienation executed while said property is held by the State shall be void and of no effect; and it further requires that the circuit clerks and the levee treasurers and the chancery clerks have immediate accounting for taxes suspended with said levee boards for collection.

And by section 21 of said act it is provided that all the laws governing the transaction of the said levee board which are in conflict with the provisions and purposes of — be, and the same are hereby, repealed.

That by an act of the Legislature of the State of Mississippi amendatory of said act of May 13, 1871, being chap. 74, Acts 1875, the said liquidating levee commissioners were directed to issue certain bonds of said liquidating levee board in favor of certain claims existing at the date of the act of May 13, 1871, although the same had been long since barred by said act.

That by an act of the Legislature of the State of Mississippi, approved February 24, 1875, entitled "An act to repeal an act entitled An act to provide for the payment of certain warrants on the treasurer of the levee fund of Issaquena county, in this State," approved Dec. 7, 1870, it was provided that the above-mentioned act be, and the same is hereby, repealed.

By section 2 of said act it was provided that the commissioner to liquidate certain outstanding liabilities incurred for levee purposes prior to the first of January, 1862, appointed under the act approved May 13, 1871, be, and he is hereby, authorized and required to act upon and carry out any application heretofore made or arrangements heretofore begun for converting the warrants mentioned in said act hereby repealed into bonds or certificates such as are author

ized to be issued by said commissioner under said act authorizing his appointment and the acts amendatory thereof, the same to be done as practicably may be as of the date when said application was made or arrangements begun, it being the design of this act to secure to the holder or holders of said warrants the same benefits secured to other holders of like indebtedness who have
18 proved and converted their claims pursuant to the provisions of said act under which said commissioner was appointed: Provided, however, that application shall be made and said warrants presented and surrendered to said commissioner for the purposes aforesaid within sixty days from the date of the passage of this act.

That by an act of the Legislature of the State of Mississippi, approved April 15, 1876, entitled "An act in relation to public revenue, and for other purposes," and by section 21 thereof, it is provided that lands which have been sold to the State for taxes shall be assessed at their proper value, but no county or other taxes shall be paid by the State therefor; that county and other taxes shall be a lien upon the land, and when the land is redeemed by the owner the auditor shall collect the county and other taxes and damages at the same time and in the same manner as he collects the amount due the State. When land has been forfeited to the State and is subject to entry for amounts due the State, county, and other taxes shall also be collected and paid before the auditor makes a conveyance to the purchaser thereof.

That by section 48 of said act it is provided that upon sale of lands by the auditor he shall collect the levee taxes due on lands sold by the State, and that the same shall be placed to the credit of the several levee boards to which the same may be due.

That by section 77 of said act it is provided that nothing in this act shall be so construed as to conflict with the act abolishing the liquidating levee commissioners, and provides for the redemption of the lands in the liquidating levee district.

That by an act of the Legislature of the State of Mississippi, approved April 11, 1876, entitled "An act to abolish the office of the liquidating levee commissioner and to provide for the redemption of lands in the liquidating levee district, and for other purposes," it was provided that the office of liquidating levee commissioner should be abolished, and that the auditor of public accounts and the treasurer of the State be constituted *ex officio* liquidating levee commissioners, with all the powers and duties of the liquidating commissioner; that all the property, real and personal, of the liquidating levee board should be vested in and subject to the said *ex officio* commissioners; that the duties and responsibilities of the said auditor and treasurer should be the same as were imposed by law for the discharge of their duties as auditor and treasurer of the State; that all claims of every nature whatever against said liquidating levee board which had not been audited and bonds issued therefor shall be barred.

That by section 5 of said act it is provided that no claim against the liquidating levee board which has not heretofore been audited

as provided by the foregoing act and for which levee bonds have not been issued shall ever be recognized or allowed as a levee debt intended to be liquidated by said acts, nor shall any levee bonds be issued therefor, but all such claims shall be, and the same are hereby, barred and prescribed.

By section 6 of said act it is provided that all lands lying within the levee district created by said acts of December 2, 1858, and February 13, 1867, which have been heretofore struck off or sold to the State or the liquidating levee board or commissioners thereof or to the levee boards of either of the districts under the provisions of any revenue law of this State or of any levee law and which are now held or claimed by the State or by any of the levee boards or commissioners under any tax sale or for forfeiture may be redeemed at any time prior to the first day of November, 1876, without interest or damages, upon the payment of the taxes due thereon: Pro-
19 vided, that where any of said lands sought to be redeemed are situated in district No. 1, created by said act of March 17, 1871, the auditor shall require the person to pay the levee tax due to district No. 1 in the bonds or coupons of said district.

That by section 2 of said act it is provided that all lands in the levee district may have the State and county taxes paid upon them without the payment of the levee taxes, and in case of delinquency the lands shall be struck off to the State, and the auditor shall collect and account for the levee taxes received by him.

And by section 12 of said act it is provided that the fiscal year of each and every levee board in this State of every sort whatever shall commence and end with the fiscal year of the State as the same may be established by law.

And by section 13 of said act it is provided that if any of the lands mentioned in said act shall not be redeemed or purchased as therein provided for before the first of January, 1878, no further time for redemption shall be allowed, and the title thereto shall be vested in the State of Mississippi, and no action in law or equity shall be maintained in any court of this State, either against the State of Mississippi or any grantee or donee from the State of Mississippi, for the recovery of any such lands, and that all levee taxes that may be due or accrue on said land shall be suspended until the same shall be sold or donated by the State, when the levee taxes thus due shall be paid by the grantee or donee of the State.

That an act was passed by the Legislature of the State of Mississippi, approved April 11, 1876, entitled "An act to abolish the levee board of district No. 1 and to pay the debts of said board."

By section 1 of said act it is provided that the offices of commissioners, secretary, treasurer, and collector of levee district No. 1 be, and the same are hereby, abolished, and that the auditor of public accounts and the treasurer of the State be, and they are hereby, constituted and appointed the levee board of district number 1 *ex officio* with no other salaries, perquisites, or emoluments than now pertain to their respective offices; that they should be responsible on their official bonds for the safe keeping and proper management

of the levee funds of said district, and discharge all the duties of the levee board, secretary, and treasurer of same, and all laws and parts of laws touching the levee fund of district number 1, the collecting and disbursement of the tax levied on account of said district, shall operate and be as binding upon them as upon the commissioners, secretary, and treasurer of said district, it being the intent and purpose of this act to substitute the auditor of the State and the treasurer thereof *ex officio* as such commissioners, secretary, and treasurer in place and stead of the levee commissioners, secretary, and treasurer of levee district No. 1 now in office.

By section 2 of said act it is provided that the State treasurer shall keep a separate book of all the transactions and records of the property and status of the levee fund of said district No. 1, and he shall be the custodian of the money and assets belonging to the said fund, and shall bear towards it the same relation which he does to the State funds; that the auditor of the State shall bear the same relation to said levee affairs as he does to the affairs of the State of Mississippi; that an annual account of the receipts, disbursements, debts, property, assets, and liabilities of said levee district No. 1 shall be contained in the official reports of the auditor and treasurer to the Legislature.

That by section 3 of said act it is provided that all officers of said levee district No. 1 shall turn over all the books, papers, records, deeds, or other property in their possession to the auditor of the State, to be by him kept in his office as like books, papers, and records of the State are now kept.

By section 5 of said act it is provided that the assessment of the lands of said levee district made for the year 1875 shall remain as the assessment thereof until otherwise ordered by law, and that it shall be the duty of the auditor to transmit to the sheriff of each county a certified copy of said assessment, in a book for use, on or by the first day of October in each year, to be by him used in collecting the levee tax of said district No. 1.

That by section 6 of said act it is provided that the sheriffs of the several counties are required to collect the taxes of district No. 1 at the same time as State and county taxes are collected, and to treat the said levee taxes and sales for the same in same manner as for State and county taxes, and in case of sale only one sale to be made, one deed to be executed, and when the same shall be struck off to the State that deed to run in the name of the State of Mississippi.

By section 7 of said act it is provided that the sheriffs shall receive in payment of said levee taxes due bonds and coupons of said levee district except two per cent. in cash.

That by section 8 it is provided that upon the redemption and purchase of lands from the auditor *and* he shall collect the different kind of taxes due thereon, and the auditor shall receive in payment for such lands such funds as are receivable in payment for the different kinds of taxes respectively.

That by section 9 of said act it is provided that said auditor and treasurer are vested with full power to settle up, under the laws now in force, the unfinished business of said levee board of district No. 1

and pay any outstanding liabilities of the same in such funds as may be applicable to the same, and if there should be in the hands of the treasurer any sum of money to the credit of said levee board of district No. 1 he shall appropriate the same in the payment of debts not secured by bonds, and the surplus, if any, in buying bonds and coupons of said levee district No. 1 to the best advantage, after inviting proposals to bid therefor by publication, the funds on hand to be appropriated to the lowest bid.

By section 11 of said act it is provided that all acts and parts of acts in conflict with said act are repealed.

That in and by an act of the Legislature of the State of Mississippi approved March 1, 1878, amendatory of an act approved April 11, 1876, it was provided that all the lands mentioned in said act of 1876 which were then held by the State of Mississippi may be sold by the State to any person who may desire to purchase the same, upon the same terms and conditions as are named in sections 6 and 7 of said act, except the taxes due the State and counties for the fiscal year preceding the fiscal year in which the lands may be purchased may be paid in like manner as therein provided for the payment of the taxes for the years 1874 and 1875.

And that by an act approved March 5, 1878 (by section 105 thereof), it was provided that the fiscal year of each of the levee districts shall be the same as the fiscal year of the State, and that all lands thereafter delinquent for any levee tax shall be sold in the same manner and at the same time as lands delinquent for State taxes, and if upon offering said lands no person shall bid the whole amount of taxes due thereon and all costs, the collector shall strike off the same to the State; but said act of March 5, 1878, was not to conflict in any manner with the act of April 11, 1876.

That in and by an act of the Legislature of the State of
21 Mississippi approved March 6, 1880, it is provided that a new registration of the liquidating levee bonds shall be made, and that all bonds not presented and registered shall after June, 1880, be barred, and that new bonds shall be issued for the bonds so registered.

That an act was passed by the Legislature of the State of Mississippi approved March 5, 1880, entitled "An act to systematize the records of State-tax lands, facilitate tax collectors' settlements, and for other purposes," whereby it was enacted that the auditor of public accounts be authorized to compile from the records of his office a consolidated record of all land sold for taxes in each county, from the sales of the taxes for the fiscal year 1874 to the sales of the year 1880, inclusive, except that for those counties where there *was* no sales under the abatement act of 1875 the land shall be compiled regardless of the dates when sold to the State; that where it shall be found in compiling that the same lands have been sold twice to the State, no redemption or purchase having been made from the first sale, the auditor shall disregard the last sale, in order that there may be no duplicates; and the record shall show the date of the sale to the State and to whom assessed when sold, if the lists show these facts; that such lists shall be revised and compared and a copy of each shall be sent

to the proper officer in the county in which the lands are situated, and one shall be preserved in the auditor's office, and in compiling such records for the counties in the levee districts the State and levee lands shall be separated according to priority of title; that where lands have been improperly sold to the State that the same will be released by the auditor upon presentation by the owner or person in interest of the tax receipts for the fiscal year for which the lands were sold, but in such cases the auditor shall collect any taxes remaining due before issuing a release, and shall account for the same as in cases of land purchases and redemptions; that said certificates of release shall be presented and registered by the State treasurer as in the case of deeds executed by the auditor; but where it shall appear that the taxes for the fiscal year for which the sale was made were not paid, the auditor shall not give credit to the owner for the receipts of any subsequent years; that it shall be the duty of the tax collector of each county to ascertain, where it is possible, all lands in his county which are improperly held by the State and levee board and report the same to the auditor of public accounts, who shall release all such lands and report them to the proper officer of the county to be assessed.

By section 6 of said act it is provided that the issuing of releases free of charge shall only apply to lands now held by the State improperly; but if such lands shall be improperly sold to the State after the system provided for by this act shall have been inaugurated, the auditor shall be entitled to the release fee as provided for in the revenue law.

That an act was passed by the Legislature of the State of Mississippi, entitled "An act for the relief of the levee-tax payers in levee district No. 1," whereby it was recited that whereas the assessment of 1871 was changed by section 5 of said act of 1876, and that said section 5 had been declared unconstitutional by the Federal court, therefore it was enacted that the time for the payment of the taxes in said levee district No. 1 is extended until sixty days after the passage of said act, and that the time of sale of lands delinquent for the said taxes of 1881 is fixed for the first Monday in June, 1882, and the sale to be made in the manner as now provided by law; that said section 5 of said act of 1876 be repealed, and that the assessment, as provided by the act of 1871, be made by the tax-payers in said district.

22 That by chapter 414 of the acts of 1882 said last-named act was amended so as to postpone the time for the payment of taxes of district No. 1 to the 15th of December, 1882, and the time for the sale of lands delinquent for the fiscal year 1881 was thereby fixed for the first Monday of March, 1883.

That an act was passed by the Legislature of the State of Mississippi, approved April 11th, 1876, entitled "An act to relieve the lower part of Coahoma county and De Soto and Tallahatchie counties from levee tax of district No. 1," whereby it is provided that all the lands in the lower part of Coahoma county and in De Soto and Tallahatchie counties which are not protected from overflow by reason of the failure of levee board in district No. 1 to complete its levee

in Coahoma, De Soto, and Tallahatchie counties be, and the same are hereby, exempted from all tax imposed by the act creating said board, approved March 17, 1871, or any act amendatory thereof.

By section 2 of said act it is provided that the board of supervisors may at any meeting hear and decide any question arising as to whether any particular tract of land is to be exempted under this act, and any person interested therein who may be dissatisfied with the decision of the board of supervisors in any such case may appeal to the circuit court as in other cases.

That an act was passed by the Legislature of the State of Mississippi, entitled "An act to amend an act entitled An act to abolish the office of liquidating levee commissioner and provide for the redemption of lands in the liquidating levee district, and for other purposes, approved April 11, 1876," approved February 1, 1877, whereby it was provided that section 6 of said act to abolish the office of liquidating levee commissioner and provide for the redemption of lands in the liquidating levee district be so amended as to allow the lands therein described which have not been taken up by redemption or purchase to be redeemed at any time prior to Nov. 1, 1877, upon the same terms and conditions as are therein contained, except the taxes due for the fiscal year 1876 shall be paid in like manner as therein provided for the payment of taxes for the years 1874 & 1875.

By section 2 of said act it is provided that said act be so amended as to suspend the operations thereof in regard to lands provided for in section 1 of this act until Nov. 1, 1877, when the same shall be in full force and effect.

By section 4 of said act it is provided that in lieu of the taxes of five and three cents levied by said act of 1867 that a tax of two and one-half cents and one and one-half cents per acre is hereby levied, payable in United States currency, upon the same terms and conditions as the act of 1858. Said tax is made a lien *in rem*.

By section 6 of said act it is provided that all liquidating levee bonds, certificates, surplusage certificates are required to be registered on or before the first day of June, 1877, or be forever barred; that for said certificates registered under said act bonds of said liquidating levee board should be issued on the basis of thirty-three and one-third of new for the face and interest of old; that the former tax was by said act repealed and the moneys raised by said tax imposed by said act were to create a sinking fund, to be paid out to the lowest bidder on the bonds issued under said act.

By section 13 of said act it was provided that nothing in this act shall be construed to change or revoke the terms or conditions for the redemption and purchase of lands as prescribed in the acts of which this act is amendatory, as the same are extended in section one of this act.

That by chapter 14 of the acts of 1882, approved March 8,
23 1882, it is provided: Whereas the liquidating levee debt has been definitely ascertained by said act of March 6, 1880, and by sundry acts passed at the session of 1882; and whereas the whole of said debt will probably be liquidated within the next twelve months, it was provided by section 1 that the liquidating levee com-

missioner shall, on or before the first Monday in June, 1882 and 1883, make a report to the Governor of the State of the balance due, if anything, in either year on said debt, which report shall be published.

By section 2 of said act it — provided that if it shall appear by the said report that a less tax than five and three cents per annum would pay the balance due on said debt, then it should be the duty of said liquidating levee commissioners to reduce said tax *pro rata* and so instruct the tax collectors in the different counties.

By section 3 of said act it is provided that if by said reports it shall appear that the whole of said debt has been paid it should be the duty of the Governor to make his proclamation to that effect, and after the said proclamation the office of said liquidating levee commissioners is abolished, and any surplus or funds remaining in the hands of said liquidating levee commissioners shall be distributed, one-half to the board of Mississippi levee commissioners and the balance *pro rata* to the counties of Coahoma, Tunica, and De Soto for the building and repair of the levees in said district and counties, and said tax shall not thereafter be collected.

That by an act of the Legislature approved March 5, 1884, entitled "An act to repeal an act to redeem and protect from overflow from the River Mississippi certain bottom lands herein described, approved March 17, 1871, and for other purposes," it is recited that, whereas the time fixed by law for the collection of the taxes assessed against the land embraced in the levee district known as district No. 1 has expired and the further collection of said taxes has been suspended by the tax collectors in said district No. 1, in accordance with the laws of the State of Mississippi creating said district No. 1 and the various officers thereof; and whereas the further existence of the said levee board of the State of Mississippi, district No. 1, as a body corporate can be of no further good nor benefit nor furnish further protection to the said lands embraced in said district, it was provided by section 1 of said act that an act entitled An act to redeem and protect from overflow from the River Mississippi certain bottom lands herein described, approved Mar. 17, 1871, be, and the same is thereby, repealed, and the levee district created by said act as the "levee board of the State of Mississippi, district No. 1," is hereby forever abolished and dissolved, without power of revivor or succession of any kind or in any form whatsoever.

By section 2 of said act it is provided that an act entitled "An act to abolish the levee board of district No. 1 and pay the debts of said board," approved April 11, 1876, be, and the same is hereby, repealed, and the duties, powers, and obligations imposed and conferred upon the auditor of public accounts and the treasurer of the State, as constituting, *ex officio*, said levee board of district No 1, be, and the same are hereby, revoked, rescinded, and abrogated, and said levee board of district No. 1, as so constituted, is hereby forever abolished and dissolved, without power of revivor or succession of any kind whatsoever.

By section 3 of said act it is provided that the auditor of public accounts, as State auditor, may receive the bonds and coupons of

said former levee board of the State of Mississippi, district No. 1, in the redemption or purchase of lands heretofore sold for the non-payment of district No. 1 levee taxes to the extent that said levee taxes are now due and unpaid for all years preceding up to and including the year March 17, 1883.

24 By section 4 of said act it is provided that it take effect and be in force from and after its passage.

That in and by an act of the Legislature of the State of Mississippi approved March 15, 1884, the said act of March 8, 1882, was so amended as that it continued the liquidating levee commissioners until all the lands forfeited for the non-payment of taxes shall be redeemed, sold, or otherwise disposed of.

That in and by an act of the Legislature of the State of Mississippi approved March 14, 1884, entitled "An act for the benefit of purchasers of levee lands sold under the decree of the chancery court of Hinds county, first district, in the cause of Joshua Green *et al. v.* Hemingway & Gibbs, auditor and treasurer and *ex officio* levee commissioners," it was provided that the auditor of public accounts is authorized and directed to make, execute, and deliver to all purchasers of lands in the liquidating levee district sold under the decree of the chancery court of the first district of Hinds county, in the case of Joshua Green *et al.* against Hemingway & Gibbs, auditor and treasurer and *ex officio* levee commissioners, and others, and to all persons claiming under said purchaser, by descent or otherwise, a quitclaim of the title of the State to the land or lands sold under said decree by the commissioners of said chancery court upon payment to said auditor of the usual fees for making conveyances by him as now provided by law if applied for within twelve months after the passage of this act: Provided that nothing therein contained shall be so construed as to abate any levee taxes whatever, either liquidating or otherwise, which had accrued upon said lands or any of them prior to the first of January, 1883; and it is provided further that no such quitclaim deed shall be made until all liquidating levee taxes on said land shall have been paid.

By section 2 of said act it is provided that said auditor of public accounts shall not in any case execute such quitclaim deed described in the foregoing section unless all State, county, and levee taxes due thereon up to the date of the execution of the quitclaim deed as aforesaid shall have been paid: Provided that the Memphis and Vicksburg Railroad Company shall not be required by the auditor to pay any State and county taxes heretofore due from which it was exempted by the provisions of its charter or any act of the Legislature passed prior to the year 1884.

By section 3 of said act it is provided that this act take effect from and after its passage.

That by chapter 78 of the acts of 1884, approved March 1, 1884, it was provided that certain liquidating levee bonds were entitled to the benefit of the act of March 6, 1880, though not registered thereunder, and new bonds under said act were directed to be issued therefor to the amount of about four thousand dollars.

That by chapter 119 of the acts of 1886 the said act of March 15,

1884, was amended so as to provide that after the payment of all debts of the said liquidating levee board the office of liquidating commissioner should be continued until the termination of all suits now or that may hereafter be brought for the collection of said liquidating levee taxes collected by the officers and not paid over to the authorities authorized by law to receive the same.

That by an act of the Legislature of the State of Mississippi, chapter 23 in the act of 1888, entitled "An act to quiet and settle the title to certain lands in the Yazoo delta which were sold by the commissioners of the chancery court for the first district of Hinds county, in the case of Joshua Green and others against Hemingway and Gibbs, treasurer and auditor and *ex officio* liquidating levee
25 commissioners," it is recited that whereas there has heretofore been sold by said commissioners a large amount of land claimed heretofore sold to the board of liquidating levee commissioners for the taxes due said board and to have been its property; and whereas by the lapse of time, the destruction of records, and the loss of the original tax collector's deeds it has become difficult in many instances for the purchasers of said lands to establish the title of said liquidating levee board to the same; and whereas the development and settlement of that portion of the State is much retarded by the unsettled condition of land titles, and the public interest will be promoted by legislation that will make them secure: Therefore

It was provided by section 1 that the deeds executed by said commissioners of said chancery court in said case shall be taken and held in the courts of this State as *prima facie* evidence of the regularity and validity of said chancery court proceedings and of the authority of said commissioners to sell and of the proper confirmation of said sale, and shall also be taken and held in all the courts of this State as *prima facie* evidence that the land embraced was duly and legally sold to said board of levee commissioners up to and including the sale of 1874 for the taxes due and unpaid thereon, and that the title conferred by said deed is to all intents and purposes valid.

By section 2 of said act it is provided that the auditor of public accounts is hereby required, upon application made to him by any purchaser of said levee lands from said commissioners of said Hinds county chancery court or any person or corporation holding title under such purchaser and upon payment to him in lawful money of the United States of all taxes that have accrued on said lands without costs or damages since the date of the purchase thereof under the decree aforesaid or satisfactory evidence to him that such taxes have been paid, to execute to such applicant a deed conveying the State's title to the land held by said applicant under said conveyance from said commissioners from the Hinds county chancery court: Provided, that the deeds executed by the auditor of public accounts in pursuance of this section shall have the effect of passing title of the State to the lands embraced therein whensoever the same may have been acquired and of releasing all taxes, State, county, and municipal, which may have accrued prior to the date of the purchase from said commissioners, notwithstanding any error or mis-

calculation by the auditor of the amount of taxes to be paid under the provisions of this section, and no such error or miscalculation shall be held to invalidate such conveyance or impair the effect hereinbefore declared, but the land conveyed shall nevertheless be liable for any deficiency in the amount stated or demanded, and the purchaser shall be entitled to be paid from the treasury any excess paid by him over and above the true amount so required to be paid.

By section 3 of said act it is provided that said auditor's deed executed in pursuance of section 2 shall be taken and held in all courts of this State as *prima facie* evidence of paramount title.

By section 4 of said act it is provided that twelve months' occupation at any time after the passage of this act of any tract of land under any such conveyance from said commissioners of said Hinds county chancery court or under said auditor's deeds or any part thereof by any such occupant claiming the whole shall forever bar any action, either at law or in equity, for such tract.

That by section 5 of said act it is provided that all sales of lands lying in the district subject to the liquidating levee tax heretofore made for said tax shall be, and are hereby, declared to be valid, notwithstanding any defect or irregularity in the same, and shall
26 not be impeached for any cause, except that the tax for which said land had been sold had been paid: Provided, that this act shall not operate in favor of any person or corporation claiming any lands under and by virtue of any title acquired from said liquidating levee board or under the decree of the chancery court of Hinds county in the case of Green *et al. v.* Hemingway *et al.* against any one who has had continuous and adverse possession of any lands claiming under color of title since the date of the sale thereof to said liquidating levee board who has continuously paid all taxes thereon or as against any one claiming any lands under sales made by the sheriffs in 1885 (1875) under what is known as the abatement act who has been in actual and continuous adverse possession of such lands and has continuously paid all taxes thereon since the date of their said purchase.

By section 6 of said act it is provided that immediately upon making the conveyance of any tract of land as prescribed in section 2 of this act the auditor shall strike from the lists of land held by the State the tract of lands so conveyed.

That by section 7 of said act it is provided that the Louisville, New Orleans & Texas Railroad Company, holding land acquired by the Memphis & Vicksburg Railroad Company by purchase under the decree aforesaid, shall be required to pay in lawful money of the United States the taxes thereon only for the years 1882, 1883, 1886, and 1887 and thereafter, and upon the express condition that said company and its vendees shall be entitled to the benefits of the provisions of this section only when it shall, by resolution of its board of directors, surrender its claim to the exemption of the land aforesaid from taxation and file said resolution or a duly certified copy thereof with the secretary of state, and shall enter a dismissal of the suit now pending in the circuit court of the United States for the southern district of Mississippi, wherein the said railroad company

is complainant and Scott and others, sheriffs, defendants: Provided that said railroad company shall accept the provisions of this act within ninety days after its passage; that any other applicants for the benefits of this act shall make their application to the auditor within twelve months after its passage, the true intent and meaning of said section being that said Louisville, New Orleans & Texas Railroad Company shall pay taxes for said years 1882, 1883, 1886, and 1887 on all the lands acquired from the said Memphis & Vicksburg Railroad Company except such as have been paid by its vendees.

By section 8 of said act it is provided that the auditor give notice of the passage of this act by publication, and that he exact and collect from each applicant for the State's quitclaim under the provisions of this act the sum of fifty cents to cover the cost of said publication.

By section 9 it is provided that all acts in conflict with this act are hereby repealed, and that this act take effect and be in force from and after its passage.

That in and by an act of the Legislature of the State of Mississippi approved — day of ——, 1870, the Memphis & Vicksburg Railroad Company was chartered for the purpose of operating a railroad under the franchises thereby conferred from the city of Memphis, Tennessee, to Vicksburg, Mississippi.

By an act of the Legislature of the State of Mississippi approved March 3, 1882, the Memphis & Vicksburg Railroad Company and the Mississippi Valley & Ship Island Railroad Company were permitted to consolidate and were merged into the Louisville, New Orleans & Texas Railroad Company, and it was provided that the provisions of the 21st section of an act incorporating the Mobile &
27 Northwestern Railroad Company, approved July 20, 1870, is made to apply to said consolidated company, and said section is made a part of the said act; that by said 21st section it was provided that, in consideration of the construction of the railroads provided for herein and of the great benefit which the State will receive in the development of its agricultural resources by means of said railroads as works of internal improvement and also of the increased value which will thereby be added to the property of the State, thus enabling the State to greatly increase its revenue without additional and burdensome taxation upon the people, the State hereby agrees with said company (and which agreement is irrepealable) that all taxes to which said company shall be subject for the period of thirty years are hereby appropriated and set apart and shall be applied to the payment of the debts and liabilities which the said company may have incurred in the construction of said road or for money borrowed by said company upon lands or otherwise to be used in constructing said roads or paying debts incurred by said company in constructing the same; and it shall be the duty of the tax collector in every county in each and every year to give to said company a receipt in full for the amount of said taxes upon receiving from the company an affidavit made by the president or cashier of said company that the amount of said taxes *have* actually been

paid and applied by said company during the year in the payment of the debts incurred or money borrowed as aforesaid, and which receipt so given shall be in full of all taxes, county, State, and municipal, to which said company shall be subject.

Complainants state that the foregoing constitutes the history of the legislation of the State of Mississippi upon the matters involved herein, and each and every of said acts so referred to is made a part hereof as if specifically set forth herein.

That on the 20th day of February, 1877, Joshua Green, the holder of a large amount of liquidating levee bonds issued under the acts of 1867 and 1871, filed his bill in this honorable court on behalf of himself and other bondholders against W. H. Gibbs, auditor of public accounts, and W. L. Hemingway, treasurer, of the State, in their capacity as *ex officio* liquidating levee commissioners; that the State of Mississippi was also named as defendant therein in her individual capacity, but not as trustee for said levee board of district No. 1; that said Mississippi levee board of district No. 1 was not a party to said suit; that in and by said bill said complainant recited the acts of 1858, 1867, 1871, 1860, 1872, 1875, 1876, 1877 as applicable to the liquidating levee board, and averred that the lands acquired by the liquidating levee board under said acts of 1867 and 1871 constituted a trust fund for the payment of the bonds, and that the act of 1875, in so far as it abated the liquidating levee tax, was *not* unconstitutional, and that the act of 1877, in so far as it undertook to change the contract evidenced by the act of 1867, was unconstitutional.

That said bill averred that a large number of lands had been acquired by the liquidating levee board, but did not give the description of said lands, and it averred that complainant therein was ignorant of the description, and prayed a discovery of the liquidating levee commissioners of the dates of the sales to the liquidating board of all lands sold under the acts of 1867 & 1871 and amendments thereto, and also prayed for an injunction against the liquidating levee commissioners from putting in operation the act of 1877, and also prayed that the lands acquired by the liquidating levee commissioners should be dealt with as a trust fund and sold for the benefit of the bondholders of liquidating levee bonds under said acts of 1867 and 1871. Said bill also averred that during the time
28 that the lands "acquired" were held by the liquidating levee board that they were exempt from taxation; but complainant avers that no relief was prayed on this aspect of the bill. Upon that bill an injunction was granted and served upon the liquidating levee commissioners, Gwin & Hemingway, restraining them from executing said act of 1877. Process was issued on said bill directed to W. H. Gibbs, auditor of public accounts, and W. L. Hemingway, treasurer, of the State of Mississippi, and *ex officio* liquidating levee commissioners, and the State of Mississippi to answer said bill, but said process *were* executed only on said W. H. Gibbs, auditor, and W. L. Hemingway, treasurer, of the State of Mississippi. No service was had of said process upon the State of Mississippi. To said bill a demurrer was filed as follows, to wit:

"JOSHUA GREEN, Complainant,
v.
W. H. GIBBS, Auditor, and W. L. HEMINGWAY, Treasurer, and Levee Commissioners, and THE STATE OF MISSISSIPPI, Defendants.

These defendants, not confessing or acknowledging all or any of the matters in said complainant's bill set forth and alleged, except for the purposes of this demurrer, demur thereto, and for cause of demurrer show," stating substantially that there is no equity in the bill, and that the act complained of is not unconstitutional, and that the act creating the indebtedness on which complainant sues was unconstitutional; which demurrer is signed J. B. H. Hemingway, sol.; W. H. Gibbs, auditor, and W. L. Hemingway, treasurer, and *ex officio* liquidating levee commissioners; George E. Harris, att'y gen'l.

Upon said demurrer is endorsed by counsel for complainant that a certificate thereto is waived, and that the demurrer is to be considered by the courts as presenting any legal objection to the bill, whether the cause be specially assigned or not; which said demurrer, as complainants are informed and believe, was, *pro forma*, overruled by the chancery court upon a telegram signed "George E. Harris," addressed to counsel of complainant, telling them to take an order *pro forma* overruling his demurrer and granting an appeal. An appeal was thereupon granted in open court on behalf of defendants to the supreme court of the State; that upon the appeal to the supreme court of the State the decree overruling the demurrer was affirmed and the cause was remanded for answer; that upon the mandate of supreme court being filed in the court below no answer was filed by the State of Mississippi to the bill, and the same was taken for confessed against her; that after said *pro confesso* against the State a rule was made upon the liquidating levee commissioners requiring them to file in the chancery court in said suit a list of all the lands held or claimed by the liquidating levee board under said acts, giving the date of sale and a specific description of the lands, and said rule having been made absolute certain lists of lands claimed as held by the liquidating levee board were filed in said court by the liquidating levee commissioners; that afterwards, in 1881, by the decree of said court, said lands or a part thereof were allowed to be redeemed or purchased for liquidating levee bonds upon terms named by the court, and after many were thus disposed of a petition was filed in said cause by the liquidating levee commissioners to the court praying for leave to sell the Vicksburg & Memphis Railroad Company seven hundred and seventy-six thousand acres of said lands for the price of 8 cents per acre in liquidating levee bonds and to convey such title thereto as was held by the liquidating levee commissioners, and the prayer of such petition was granted by the court, and the liquidating levee commissioners were authorized to sell such title as was held
29 by the liquidating levee board to said lands to the Vicksburg & Memphis railroad upon the terms named; that, upon

like petition, in 1881 a large number of acres of said lands were sold to one Gordon for 6 cents per acre, and the same were purchased subsequently by the Delta and Pine Land Company, and the same were purchased from said commissioners for said liquidating levee bonds issued under the acts of 1867 & 1871 and subsequent thereto; that under said order authorizing such sale said Vicksburg & Memphis railroad purchased said lands and paid therefor the sum of — cents per acre in the bonds or scrip of the liquidating levee board issued under the acts of 1867 and 1871; that no taxes of district No. 1 were collected on said lands lying in said district No. 1 from the said purchasers by the said liquidating levee commissioners or any — else and none have been paid thereon.

Complainants state that after the rendition of the decree in Green *vs.* Gibbs all the lands that had been struck off to the levee treasurer of liquidating levee district lying in district No. 1 were sold by the liquidating levee commissioners as covered by said decree and as liquidating levee lands, regardless of the validity or invalidity of the sale, to said board and without demanding or pretending to collect the taxes due thereon to district No. 1 and deeds pretending to convey the title made thereto.

Complainants state, on information and belief, that none of the land purchased or redeemed from said liquidating levee commissioners under said decree had been "acquired" by the liquidating levee board, and that the same were not owned by said board; that none of the lands purchased under said decree were sold by the tax collectors on the day required by law; that bonds were not duly executed by the tax collectors as provided by said acts — 1867 and 1858 before making the sales pretended to have been made to said liquidating levee board; that deeds, as required by law, were not executed by the tax collectors to the levee commissioners for said lands as struck off to said board.

Complainants state, on information and belief, that the pretended registration of claims under the act of 1867 was void, because the said claims were not presented in time for registration nor registered according to law and there was no jurisdiction in the said commissioners to allow any claim against said liquidating levee board not presented to be registered within the time and as required by said act.

That under said act of 1867 there was pretended to be issued over six hundred thousand dollars of bonds of said liquidating levee board styled "the old series," and that said bonds were void for want of power in the commissioners to issue them; that the claims were not registered as required by said act; that all claims against the said liquidating levee board, as provided for in said act, were barred by the statute of limitations provided by said act because not presented as prescribed, and the pretended issuance of bonds thereafter was absolutely void.

Complainants state on information and belief that the act of Feb. 13, 1867, was a legislative scheme to pay antecedent debts created for the construction of the levee along the Mississippi river prior to 1867; that the lands along the Mississippi river lying within the

boundaries of district No. 1 were subject to yearly inundations from the Mississippi river unless the same was protected by embankments or levees; that such lands so lying in said district No. 1 were lower than the banks of said river, and when the floods came it caused great damage to the lands so submerged, making tillage hazardous, uncertain, and often destroying the crops thereon, especially when the floods came in June (a very usual thing) after the crops were planted; that such floods caused stagnant water to accumulate in the low places upon the receding of such floods and caused great injury to the health of the people of such district by generating miasma and malaria, while the floods themselves would cover with water practically the whole district, destroying life and property and imperilling constantly the life, health, and property of the people of said district and causing great loss and damage to the crops on the lands and materially impairing the value thereof.

That constantly year after year these inundations flooded said district, and to prevent this calamity and protect the lives, health, and property of the people in such district the levee laws were from time to time enacted by the State of Mississippi.

That in 1871, at the time of the passage of the act of March 17th, 1871, the levees formerly constructed to protect said district No. 1 were by caving, the action of time and weather, and other causes, down, and the lives, health, and property of the people of said district *was* at the mercy of the floods of the Mississippi river, and it was necessary for the protection of the same to erect, repair, and maintain a levee as authorized by said act of March 17, 1871, and to this end said act was passed; and said levee, in pursuance of said act, was duly constructed and repaired.

That the lands lying in district No. 1 pretended to be held by the liquidating levee board under sales made prior to the act of March 17, 1871, and subsequent thereto were designed to be benefited and were benefited by the levees constructed and repaired under said act of March 17, 1871, to the same degree as any other lands lying in said district No. 1.

That said lands so pretended to be sold to and held by said liquidating levee board, if the title was vested thereby, which complainant denies, were held by it not for governmental purposes but in its social or commercial character, and for sale at any price said board fixed thereon, regardless of the amount of taxes due the liquidating levee board, and as such protected and were enhanced in value by such levee and were amenable and subject to taxation and were taxed as other lands lying in district No. 1.

That, as complainants are informed and believe, the said liquidating levee board claimed that all lands "acquired" by *ot* were exempted by section 13 of the said act of 1867 from all taxation. Said clause is as follows: "That all lands acquired by this board under the provisions of this act, or which belonged to the general levee board of levee commissioners as aforesaid, shall be exempt from State taxation for levee purposes or otherwise until the same be sold or disposed of by this board."

Complainants state on advice that an exemption pretended to be granted in a public charter or charter of delegated powers is subject to change at the will of the Legislature, and that no exemption was granted by said act which the Legislature could not change at will; that the said exemption claimed is no part of a contract and was not a part of the consideration of the issue of the bonds under said act of 1867, but was a mere privilege granted this public or quasi municipal corporation to prevent its lands being sold for State, county, or other taxes levied under the general taxing power of the State in default of payment of taxes *of taxes* imposed thereon, and such taxes were "suspended" thereon—that is, were levied but not enforced—until the said liquidating levee board might sell or dispose of the same; that the Legislature of the State of Mississippi placed this construction upon the said clause and dealt with said board as if the State and county taxes were duly imposed but the collection of which was "suspended."

31 Complainants state on advice that the exemption, if valid, was a mere exemption from general taxation by the State of Mississippi for levee purposes or otherwise; that it was competent for the State of Mississippi to exercise its general taxing power to raise funds to pay off the large indebtedness claimed to have been incurred for levee purposes by the levee boards and counties prior to 1867, and it was against the exercise of such a power that the said clause of said section 13 was inserted.

Complainants state on advice that it was *ultra vires* the Legislature of the State of Mississippi by any contract to bargain away its police power to protect the lives and lands and to preserve the health of its citizens from any casualty that may threaten them; and even if said section 13 was valid as an exemption when it was enacted, it did not deprive the Legislature of the power to impose local assessments on the lands embraced within district No. 1 held by liquidating levee board or any one else in order to protect the lives, health, and property of the citizens within said district No. 1 when such emergency might exist, and complainants aver that the same existed on March 17, 1871, and the act of March 17, 1871, was passed to provide therefor.

Complainants state that under the act of the Legislature of the State of Mississippi of March 17, 1871, under which the bonds held by them were issued, a specific tax *in rem* was levied upon all lands lying in the district, regardless of ownership, except that land held by the United States or this State in trust or otherwise, or Chickasaw lands or other school lands, if exempt from taxation, shall not constitute a part of the levee district created by this act, but those lands were to be subject to the operation of said act so soon as they became subject to taxation; that there is no exemption from taxation under said act of the lands held or pretended to be held by the liquidating levee board, and the same were and continued to be subject to taxation under said act.

Complainants state that prior to the passage of the act under which their bonds were issued, viz., in 1868, 1869, and 1870, there was a large number of acres of land lying in district No. 1 pretended to be

sold to the liquidating levee board for non-payment of liquidating levee taxes; that under the act of March 17, 1871, for the non-payment of the levee taxes levied for said district No. 1 there was duly sold and conveyed to the treasurer of said district No. 1 a large number of the said lands which were pretended to be held by the liquidating levee board under said prior sales; that complainants have not a list of said lands pretended to be sold to the liquidating levee board in 1868, 1869, and 1870, nor those sold in subsequent years, but that said information is in the possession of the State of Mississippi—in the hands of its auditor of public accounts; that complainants have not a list of the lands sold and conveyed to the treasurer of district No. 1 or to the State by it, nor upon which taxes have not been collected under said act of Mar. 17, 1871, nor of those sold by the State of Mississippi or conveyed by it for bonds or without collection of the tax due district No. 1 thereon; but the said information is in the possession and under the control of the State of Mississippi, in the hands of its auditor of public accounts, and of which complainants pray discovery; that all lands sold to the treasurer of district No. 1 were duly conveyed to him by proper deeds, duly delivered.

Complainants state that the act of May 13, 1871, amending the liquidating levee act of 1867, extending the time for presentation of claims to November, 1871, and granting the benefits of the said
32 act of 1867 to claims so presented is, as to these complainants, unconstitutional and void, it being *ultra vires* the Legislature of the State of Mississippi to waive the bar of the statute of limitations already accrued; that all claims registered and allowed by said liquidating levee board, or the Legislature of the State of Mississippi, acting for said board, whereby the debts of said liquidating levee board were created after the bar of the statute of limitations, under the act of 1867, had accrued, and after the passage of the act under which complainants' bonds were issued is, as to these complainants, unconstitutional and void as impairing the obligations of a contract, and created no liability of said liquidating levee board wherefor- the taxes imposed by the act of 1867 or any other tax, as against the right of these complainants, could be collected and for which any lands lying in district No. 1 could be sold by said liquidating levee board to realize fund to pay the same; that all sales made by said liquidating levee board of lands for the payment of said bonds, and especially those sales made for the payment of the bonds issued by said board under the act of May 13, 1871, and the acts amendatory thereto, were absolutely void and conveyed no right or title to the purchaser as against the rights of these complainants.

Complainants state that under the act of Mar. 17, 1871, under which complainants' bonds were issued, the lands which were to be sold for the non-payment of the tax and which were conveyed to the said levee commissioners of district No. 1, and the charges and assessments fixed by said act as they are from time to time collected, constitute a special fund and trust, to be used by said board, first, in the payment of any bonds issued under said act or any money that may be borrowed under its provisions, and, secondly, for the pay-

ment of any other debts or liabilities of said board, and such moneys when collected shall be paid into the treasury of said board for the purposes aforesaid.

That by said act of Mar. 17, 1871, the taxes due upon lands under said act might be paid to the sheriff in matured bonds or coupons, but that when the said lands were sold to the levee commissioners for the non-payment of said taxes the said sheriff was required to sell the same for cash to the highest bidder, and, if purchased by said commissioners at said sale for the taxes due thereon, the commissioners were authorized to sell the same at private sale, provided they obtained the amount due in cash, with accruing taxes, charges and costs, and ten per cent. interest thereon. The said cash so received was by section 20 of said act directed to be invested in United States bonds until required to pay the bonds or liabilities of said board.

Complainants state and charge that — the "abatement act" of the Legislature of the State of Mississippi a large number of the lands theretofore sold and held by the levee commissioners of district No. 1 were directed to be sold for the taxes of 1874 only, and that by said act if no person purchased at said sale the same was to be struck off to the State of Mississippi, which thereafter was to sell the same for the bonds of the different boards to which taxes were due; that a large number of the lands held by said commissioners of district No. 1 was made subject to the operation of said "abatement act" and were sold under the same and purchased by the State of Mississippi, the description of which is not known to complainants, and of which they pray discovery.

Complainants charge on advice that it was an unconstitutional exercise of authority for the Legislature of the State of Mississippi to abate any of said taxes due to the said levee board of district No. 1, especially in view of the fact that the tax imposed by said
33 act creating said levee board was limited to twelve years duration, and impaired the obligations of the contract of said bonds of district No. 1.

Complainants state that it was a proper exercise of the legislative authority to substitute the State of Mississippi as trustee for the management and control of the affairs, property, and rights of the levee board of district No. 1, through the agency of the auditor and treasurer of the State, in lieu of the commissioners appointed under said act, but that the State of Mississippi, thus becoming trustee, and her said agents, to execute the trust, were bound to execute the act of March 17, 1871, according to its terms and could not abrogate or change the same.

Complainants state that if the abatement made by the act of 1875 of three years taxes on the lands held by said district No. 1 should prevail that section 23 of said act of March 17, 1871, became operative, whereby it is provided that the charges and assessments levied by said act shall be adjudged and held in operation (meaning inoperative), then said levee commissioners shall have power and are hereby required to proceed immediately, through five commissioners, to be appointed by said board for that purpose, and have just and

legal rates, assessments, charges, or taxes levied and made in said district or on either as may be levied, sufficient in amount, when collected year by year, as contemplated by this act, to pay all such bonds, loans, debts, and liabilities and enable said board of commissioners to carry into effect the provisions of this act, one of whom shall reside in each of the foregoing counties.

That if said abatement of said taxes shall be held to be an authoritative release that then, under said section 23 of said act, a sufficient tax should be levied and collected by the commissioners to pay all the debts and liabilities of said board of levee commissioners of district No. 1.

Complainants state that the State of Mississippi is trustee for the bonds issued under said act creating said levee district No. 1, and that said trustee is bound in good faith to administer the trust as therein created through her said agencies, and that she became such trustee from and after the sale to her on the — day of ——, 1876.

Complainants state and charge, on information and belief, that the State of Mississippi nor her statutory agents for executing said trust neither collected nor demanded any of the taxes due and unpaid district No. 1 upon any of the lands lying in said district and upon which taxes were due which were sold or redeemed under the decree of the chancery court of Hinds county in said case of Green *v.* Gibbs, and said State made deeds therefor to such purchasers, though, upon information, complainants state that taxes were due district No. 1 upon nearly half a million acres of said land for a number of years, the exact number and description of which is not known to complainants and of which they pray discovery.

Complainants state that though under the act of 1884, providing for quitclaim deeds to be executed by the auditor and treasurer of the lands sold under said decree upon the payment of all levee taxes, and requiring as a condition precedent that all levee taxes due thereon should be paid before such quitclaim was executed, yet the State of Mississippi, through its auditor and treasurer, made such quitclaim deed without demanding or receiving any of the taxes due on said lands to district No. 1, of which there was a large amount.

Complainants state that under the act of 1888 it was made the duty of the auditor to collect in cash the taxes due upon the lands in district No. 1 before executing quitclaim deed as therein
34 provided, and complainants state, on information, that a large number of the lands have been quitclaimed under said act of 1888 without the State of Mississippi, through her auditor, demanding or receiving any taxes due on the lands thus conveyed for district No. 1, although there was a large amount due thereon.

Complainants state that under the act of 1888, notwithstanding any error of miscalculation on the part of the auditor in demanding taxes thereunder, that the lands so conveyed are made liable for all taxes due thereon in arrear, and notwithstanding said quitclaim under the act of 1888 said lands are still liable for all the taxes due thereon to district No. 1.

Complainants state that while under the said act of 1888 the per-

sonal liability of the defendant The Louisville, New Orleans & Texas Railroad Company was limited for the taxes due for 1882, 1883, 1886, and 1887, still the said act did not exempt or pretend to exempt from the tax due thereon to district No. 1 the said lands purchased or held by said railroad.

Complainants state and charge that all the lands purchased from the State liquidating levee board by the Memphis & Vicksburg Railroad Company which lie in district No. 1 and upon which taxes due levee district No. 1 had not been paid, of which there was a large number, are still liable for the said taxes of said district No. 1.

Complainants state that the Delta & Pine Land Company are the holders of a large amount of land acquired under the Green *v.* Gibbs decree lying in said district No. 1, upon which taxes due district No. 1 have not been paid, and has secured the State's quitclaim under acts of 1884 & 1888, and that all such lands so held should be subjected to the payment of said taxes; that said N. T. Burroughs claims to be the holder of a large amount of lands lying in said district No. 1 upon which the taxes due said levee board No. 1 have not been paid, and that the same should be collected thereon, notwithstanding he has secured the quitclaim of the State of Mississippi under the acts of 1884 or 1888.

Complainants state on information that none of the lands so purchased by said railroad company were used or acquired by said railroad company for the right of way or for the location of station-houses or depots.

Complainants state that the State of Mississippi allowed a *pro confesso* decree to be taken against her on the said bill of Green *v.* Gibbs and never appeared nor participated in the suit, but the same was conducted wholly between the complainant therein and the liquidating levee commissioners.

Complainants state and charge that they are not precluded nor barred by the decree in the case of Green *v.* Gibbs, nor is the State of Mississippi, through her auditor & treasurer, precluded or barred by said decree from collecting the taxes due district number one upon the lands lying in said district and which were embraced in said decree; that said liquidating levee board had no title to the lands; that the sale under the order of the chancery court in behalf of said liquidating levee commissioners was not such sale by the liquidating levee commissioners as was contemplated under the power conferred in the act creating such levee commissioners, and was a sale only and by virtue of the judicial power of the court ordering such sale; that the said sale was not under the terms nor in the manner prescribed by the act creating said liquidating levee board; that as to all persons not parties to said suit — *res inter alios acta* and void; that the lands held by the liquidating levee board were subject to taxation under the act of March, 1871, and the rights of levee board of district No. 1 were
35 paramount to the right of the liquidating levee board thereto; that it was the duty of said Vicksburg & Memphis Railroad Company and of said Gordon and of said Burroughs and all other persons, upon the acquisition of the title of the liquidating levee

board through the decree of said court, to have paid the said taxes due to district No. 1 upon said land, and that said railroad company and said Delta Pine Land Company and said Burroughs and all other persons by its acquisition of said title charged with said taxes undertook to pay all taxes and charges thereon or to permit its lands to be sold to pay the same; that it was beyond the jurisdiction of the court to direct a sale of said lands charged with the taxes due district No. 1 for the benefit of the liquidating levee board or of the liquidating levee title dissociated from the payment of the taxes due thereon imposed by the act creating district No. 1; that said suit was not within the scope of the pleading in said suit; that the sole effect of said decree in said suit was to authorize sale of such title as the liquidating levee board held, leaving the lands still charged with all other taxes due thereon, but it was illegal for the auditor to make such sale without collecting as the purchase price all taxes due under said act of Mar. 17, 1871, on said lands.

Complainants state that the records of said proceedings in Green *v.* Gibbs is in this honorable court, and the same is referred to herein, and the list of lands administered by this honorable court thereunder is filed therein, and the same is here referred to as constituting lands so sold or redeemed under said decree; and the said list, so far as the same embraces the lands upon which taxes are due to district No. 1, is made a part of this suit.

Complainants state that the State of Mississippi, as trustee for the holders of the bonds of district No. 1, should be compelled through its auditor & treasurer, its agents, with full power to collect and sell all the trust property as by law provided, to collect from all lands the taxes due and in arrear to said district No. 1, and that all the powers, rights, and privileges and immunities enjoyed by the State of Mississippi as such trustee should be by this honorable court compelled to be exercised in favor of the execution of said trust.

Complainants state and charge that the last sale of lands made to the commissioners of district No. 1 was made in January, 1876; that thereafter all sales for non-payment of taxes due to district No. 1 were made to & in the name of the State of Mississippi, and one deed executed to said State for the levee board, district No. 1, as well as the State and county taxes, and the auditor of the State has full power to collect and sell the trust property; that by such sales *in solidum* for taxes—levee, State, and county—the rights of district No. 1 were paramount thereto, and when sold the first duty was to specifically enforce the trust therein.

Complainants state and charge, on advice, that by the act of 1884 abolishing forever the Mississippi levee board of district No. 1 as a corporation there was no one *in esse* capable of being sued upon the contracts of said board, and that by operation of law all statutes of limitation on said contracts by the abolition of said board became inoperative as against the contracts of said board; that since said act of 1884 there has been no one *in esse* capable of being sued upon said contracts.

Complainants state and charge that the State of Mississippi, as trustee administering the trust for the benefit of the said boudhold-

ers, cannot while the said matter of the trust exists and while the said bonds are unsatisfied set up the claim or right of any statute of limitation as against said bondholders, and that the sov-
36 ereignty of the State of Mississippi became a beneficial right to complainants, so far as the statute of limitations is concerned, when the trustee became trustee for them, and that no bar could accrue under the statute of limitations to such trustee in the administration of such trust, either as against the bondholders, the *cestui que trust*., or in favor of those holding or pretending to hold the subject-matter of the trust by void sales by the auditor.

That by section 12 of said act of March 17, 1871, all deeds for lands struck off to the treasurer of levee district No. 1 were required to be left on file ten years for redemption, unless sooner purchased or redeemed, and if purchased then the owner must redeem within the two years next following the date of said purchase; that the lands sold to district No. 1 were sold in 1872, 1873, 1874, 1875, and 1876, and after that to the State of Mississippi as trustee for it; that the State of Mississippi became trustee in 1876, long before the period for redemption had expired; that the period for redemption of lands so sold in 1872 expired only in 1882, and for the first time the title became absolute in the State for said district to the lands first sold to said district; title was thus vested as ten years expired from each year's sales; that none of the lands so administered in Green *v.* Gibbs and none of the other lands held by district No. 1 were sold to individuals by said levee board of district No. 1; that the title of said lands therefore did not become absolute in said levee board of district No. 1 or the State for it until the period of ten years from the date of each of said sales had expired.

That no curative act could be passed after the act of March 17, 1871, was passed, whereby void sales to the liquidating levee board could be cured, and hence all such acts were an attempt to defeat the title of district No. 1 by subsequent legislation.

That under the abatement act all State and county taxes prior to 1874 were abated, and the title of the State, if any, under any sales for taxes prior to that time was abrogated and annulled, and for all lands so sold to the State and district No. 1 said abatement act annuls the State title and leaves the title of district No. 1 unaffected thereby; that wherever the claims of the State conflict with the title of district No. 1 the act of 1875 annuls the State title and leaves the title of the levee board of district No. 1 intact; that it was incompetent for the Legislature to sell lands held by district No. 1 for State and county taxes so long as the same were so held, and no title could be acquired by the State for any such sale.

Complainants state that no report- of the lands held or sold on account of district No. 1 have been made by the auditor or treasurer, and no reports of any kind have been made in regard thereto since 1880.

Complainants state that they have made demand on the treasurer for the payment of their bonds and coupons and were answered that there was no money or United States bonds to the credit of said account, and that the same would not be paid.

The complainants have requested the auditor to resell the said lands herein sought to be sold and as herein prayed and the request was refused.

Complainants state that the said act of the Legislature approved April 11, 1876, relieving some lands in district No. 1 from the tax imposed by the act of March 17, 1871, because not protected from overflow by the failure of the commissioners of district No. 1 to complete its levees, is as to the rights of complainants unconstitutional and void, because it impairs the obligation of complainants' contracts, evidenced by said bonds held by them. Complainants state that a large number of lands were by proceedings under this
37 act relieved from the taxes imposed by the act of March 17, 1871, the number of which is unknown to complainants, and such lands so pretended to be relieved have not paid the taxes imposed by said act of March 17, 1871, and that the auditor of the State has not required the tax collectors to collect taxes therein, but has permitted them to go without paying any of the taxes due district No. 1. Complainants pray discovery of the lands thus relieved from taxation and the amount due district No. 1 thereon.

That when the State of Mississippi became trustee and vested the administration of the affairs of said levee board of district No. 1 in the auditor of public accounts and the treasurer of said State there had been sold to the levee board of said district No. 1 a large amount of lands for the taxes due said board and unpaid thereon; the exact description of said lands is unknown to complainants, and whereof they pray discovery of said auditor, in whose possession all the books and papers of said board of district No. 1 now are; that the said lands had been sold for the taxes due said board for several years prior thereto, and the said auditor had the same for sale, for the benefit of the bondholders of the said board, in the manner as prescribed by said act of March 17, 1871.

Upon information and belief, complainants state and charge that the said auditor of public accounts has been from time to time conveying the lands so sold to said district No. 1 without collecting any of the taxes due the said district on such lands prior to the year 1874, claiming and pretending that the taxes due prior to the fiscal year 1874 were by said act of the Legislature approved March 1, 1875, relinquished and abated.

That said auditor has conveyed all the lands embraced in the said suit of Green *v.* Gibbs to the purchasers or redemptors under said decree without collecting any of the taxes due said district No. 1 on said lands so conveyed, of which there was a large amount.

That the said auditor, whenever he sold any lands which had been sold for the taxes due to said levee board of district No. 1, has in every case, as complainants are informed and believe, received bonds of said levee district No. 1 and the coupons thereof as the purchase-money therefor, so far as the said levee board No. 1 was concerned, and neither demanded nor received cash, as by the act creating said bonds of complainants he was required to do.

That said auditor has executed quitclaim deeds of the State of Mississippi, both under the act of 1884 and the act of 1888, without

requiring the payment of the taxes due to said district No. 1 on the lands so conveyed; that a portion of the lands so quitclaimed by said auditor were quitclaimed to the Louisville, New Orleans & Texas Railroad Company and to the Delta Pine Land Company, to N. T. Burroughs, and a number of other persons; that said auditor has failed to execute the trust created by the act of March 17, 1871, in this, that he has not exacted cash in payment of such purchase price, nor invested in any United States bonds, as provided therein; that said auditor has sold the said lands struck off to the commissioners of levee district No. 1, and to the State for it, and has received, unlawfully, bonds of said board in payment, & that said auditor has settled with the several tax collectors in said district No. 1, and for lands struck off to individuals has uniformly received as proper funds for settlement from the sheriffs the bonds and coupons of said board of district number one. The precise description of said lands so sold by the auditor and of those so sold by the tax collectors is unknown to complainants, but the information is in the hands of the said auditor of public accounts, and of which discovery is prayed.

38 Complainants state that after the passage of said act of 1875 making the assessment-roll of 1875 the basis of the levee tax of district No. 1, instead of the basis prescribed by the act of March 17, 1871, for several years the tax due district No. 1 was collected on the assessment of 1875, which was much less than the assessment required by the said act of 1871, the exact number of which is unknown to complainants, but of which discovery of said auditor is prayed, and thereby the said tax, as levied by the said act of March 17, 1871, was greatly reduced, to the great damage and injury of the holders of the bonds of district No. 1 issued under said act of March 17, 1871, and of which complainants are the holders.

Complainants state and charge that the said acts of the Legislature of the State of Mississippi herein set forth, whereby the taxes due to said levee board of district No. 1 were abated & by which the purchase price was changed from cash to bonds, & whereby the collection of the said tax was changed from the assessment provided by the act of 1871 to that of said act of 1875, and whereby some of the lands upon which said tax was imposed were relieved therefrom, and whereby the claims against the liquidating levee board were relieved of the bar of the statute of limitations, and whereby the obligation of the contracts of said levee board of district No. 1, as evidenced by said bonds issued under said act of March 17, 1871, was impaired (each of which statutes said auditor has been and is now executing), are void, because the same impair the obligation of said contracts and are inhibited by the Constitution of the United States.

Complainants state that there is only a few of the lands struck off heretofore to the levee board of district No. 1 or to the State for it which have not been attempted to be sold or conveyed by the auditor, and the same are of little value, and only a small amount is due the levee board of district No. 1 thereon; that there is a large amount of the bonds issued by said board under said act of 1871

outstanding unpaid, a large amount of which are held by complainants.

That the great body of said lands have been pretended to be sold in the illegal and unconstitutional methods hereinbefore described, but complainants state on advice that the auditor of public accounts had no power to sell or convey any of said lands without demanding or receiving in cash the full amount of the taxes, costs, damages, and interest due said district No. 1 thereon without abatement thereof, and assessed according to the act of March 17, 1871, and that all acts pretending to authorize any other mode of sale & any act of the auditor whereby the express terms of the act of March 17, 1871, were not executed, and all deeds executed by the auditor in pursuance thereof are void and of no effect; that the title to the lands so pretended to be sold or conveyed is still in the State of Mississippi, any pretended deed of the auditor to the contrary notwithstanding; that said lands so illegally and without authority of law pretended to be conveyed are still the property of the State of Mississippi, a trustee, and the same are in legal contemplation a part of the list of lands held by the State subject to sale, as by said act of March 17, 1871, provided.

That under said act of 1880 the auditor of public accounts caused lists of lands to be made giving the priority of title to the priority of sale, regardless of the merits of the sale, whether valid or invalid, and in this manner the large body of lands lying in district No. 1, though they had been sold to the levee board of district No. 1 for the non-payment of taxes due in 1872 and subsequently, were allotted to the liquidating board, because the pretended sale to that board was prior in date to the sale to the levee board of dis-
39 trict No. 1, and by this unconstitutional exercise of authority, not warranted even by the terms of the act, the said liquidating levee board and its bondholders were given the benefit of the sales of all such lands, regardless of the rights of levee district No. 1 and without collecting thereon any taxes due district No. 1. Complainants state on advice that the said lands so sold to both levee boards were liable to pay the taxes due district No. 1, regardless of when sold to the liquidating levee board; that, as averred herein, the said sales to the liquidating levee board were void, and no title was acquired by said liquidating levee board thereto; that said lands still stand charged with taxes due levee board of district No. 1 and should be sold therefor.

Complainants state the Governor in 1883 made the proclamation provided by chapter 14 of the acts of 1882, and the said liquidating levee board became thereby extinct; that the result of thus unlawfully dealing with the trust has been to leave a large amount of the bonds of said district No. 1 issued under the said act of 1871 outstanding and unpaid, and if the auditor is not compelled to execute the trust according to its terms and to cease the administration of said trust in the manner in which the sale has been and is being administered under said unconstitutional statutes and illegal methods there is and will be no funds to pay the same, and complain-

ants are and will be remediless except in a court of conscience wherein the trustee can be compelled faithfully to execute the trust.

That section 9 of the act of 1876, abolishing the commissioners of district No. 1 and vesting the power and duties in the auditor and treasurer of the State, expressly impairs the obligation of the contract evidenced by said act of March 17, 1871, and the bonds issued thereunder by providing that in the order of priority of payment the trust fund pledged by the act of 1871, first, to pay the bonds and, second, to pay other outstanding liabilities was by the said section 9 appropriated to pay, first, other outstanding debts and the balance to bid in the bonds, competitive bidding, at the lowest price any holder would take for his bonds, and to this extent was void.

That the auditor, as complainants are informed and believe, carried out said section 9 so far as preferring the outstanding debts in order of payment above the bonds.

That complainants are willing that any other holders of said bonds of district No. 1 may be allowed to join herein as complainants after payment of their share of expenses and costs of this proceeding; that since the act of 1884 abolishing the levee board of district No. 1 there has been no trustee charged by law with administering the trust except the auditor, who was to continue to sell, as auditor, the lands held by district No. 1.

Prayer.

The premises considered, complainants pray that the parties named in the caption of this bill be made parties defendant hereto, and for proper process therefor, returnable to the next September term of this court; that the auditor of public accounts be restrained from selling or conveying in any manner any of said lands in district No. 1 upon which all taxes due said levee board of district No. 1 have not been paid without the payment of all such taxes levied and computed according to the act of March 17, 1871, and for injunction to that end.

That a commissioner or commissioners be appointed by this court to ascertain and compute the proper and full amounts due and unpaid for taxes, costs and damages, and interest upon the lands lying in said district No. 1 upon the basis of assessment prescribed by the act of March 17, 1871, regardless of any "abatement" relief from said tax, change of assessment under the act of 1875, alledged priority of title of the liquidating levee board, or sales or redemptions under the decree of Green *v.* Gibbs, and of sales made by the auditor for bonds or coupons of district No. 1 instead of cash for the purchase-money due said district No. 1, and of any quitclaim deed under the acts of 1884 or 1888, and of any sale to the liquidating levee board, regardless of its priority, validity or invalidity, or of any other device whereby said lands have not paid its taxes, and to ascertain and report the full description of the said lands upon which said taxes are due and unpaid as aforesaid; that upon the coming in of said report and account of said commissioner that the auditor of public accounts and treasurer of the State of Missis-

sippi, or commissioners to be appointed by the court be directed to and commanded to sell the said lands in said report, for cash, for the amount of taxes, costs, charges, damages, and interest as by said report shall appear to be due, so far as the purchase-money due to levee board of district No. 1 is concerned, and for the State and county and other taxes due thereon according to law, and to execute a deed or deeds to the purchaser or purchasers thereof.

That said commissioners shall also ascertain and report the amounts due complainants on their bonds and coupons, and shall report the same to the court.

That the said treasurer shall pay over to the complainants the proceeds of said sale coming to the levee board of district No. 1 to pay and satisfy the said debts due to complainants, if sufficient; if not, to be distributed *pro rata* amongst them.

That all deeds executed heretofore by the auditor or treasurer purporting to convey any of such lands so reported by said commissioner to be in arrear for taxes due levee district No. 1, and upon which said taxes due district No. 1 have not been collected as required by said act of March 17, 1871, be decreed to be inoperative and void for want of authority in the auditor or treasurer to execute the same, and that the title thereto remains vested in the State of Mississippi, and that all such deeds be cancelled and held of no effect.

That if the court should hold that lands held by the liquidating levee board were exempt from taxation, then that an accounting be had to ascertain when sufficient taxes had been collected to pay off the valid bonds, if any, of the liquidating levee board issued prior to March 17, 1871, and that all lands sold after sufficient had been sold to pay said valid bonds be decreed illegally sold and sold hereinunder, and also ascertain which of the lands claimed by the liquidating levee board had been duly and legally sold thereto; that where lands have been sold or conveyed and all the State, county, and other taxes have been duly paid, except the tax due district No. 1, that upon the payment of such unpaid or illegally paid taxes to district No. 1, and damages, costs, &c., as by the act of March 17, 1871, provided, or when the taxes due district No. 1 have not been paid by reason of escape from taxation, that the purchaser or those holding in the former case under him, or the owner in the latter case, shall receive a deed from the auditor under this decree upon the payment of such unpaid or illegally paid taxes in cash, the former payments of State, county, and other taxes, if any, being duly credited on the purchase-money; or, if such former purchaser or those holding under him do not purchase under this decree, then from the purchaser hereunder the whole State and county taxes be collected and the same be returned to the purchaser under the former sale to the extent paid by him.

41 Or, if mistaken in the relief prayed for, such other, further, and general relief as the case stated requires and to your honor may seem meet; and as in duty bound they will ever pray, &c.

CALHOON & GREEN,
Sol's for Complainants.

42 EXHIBIT A TO ORIGINAL BILL.

List of Levee Bonds of Levee District No. 1.

AMOS WOODRUFF, Trustee,
v.
STATE OF MISSISSIPPI *et al.*

No. of bonds.	Denomination.	Date of bond.	Date of maturity.	No. of coupons attached.
167	Of 500 00.....	1st Jan'y, 1872	1st Jan'y, 1876	4 coupons of $20 each, due 1st Ju., '74, Jan. & Ju., '75, & 1 Jan'y, '76.
116	" 500	" "	" "	" " " " "
115	" 500	" "	" "	" " " " "
168	" "	" "	" "	" " " " "
169	" "	" "	" "	" " " " "
441	" 1,000	" "	" "	6 coupons of $40 each, due 1 July, '73, Jan'y, '74, Ju., '74, Jan., '75, Ju., '75, Jan., '76.
16	" 1,000	" "	" "	6 of 40, due 1 July, '73, Jan'y & July, '74 & '75, & Jan'y, '76.
514	" 1,000	" "	" "	" " " " "
512	" 1,000	" "	" "	" " " " "
448	" 1,000	" "	" "	" " " " "
284	" 1,000	" "	" "	" " " " "
105	" 1,000	" "	" "	" " " " "
13	" 1,000	" "	" "	" " " " "
15	" 1,000	" "	" "	" " " " "
14	" 1,000	" "	" "	" " " " "
155	" 500	" "	1875	2 of 20.00, due 1 July, 1874, & 1 Jan'y, '75.
127	" 500	" "	" "	" " " " "
128	" 500	" "	" "	" " " " "
129	" 500	" "	" "	" " " " "
151	" 500	" "	" "	" " " " "
154	" 500	" "	" "	" " " " "
82	" 1,000	" "	" "	4 of 40.00, 1 July, '73, 1 Jan'y & July, '74, 1 Jan'y, '75.
254	" 1,000	" "	" "	" " " " "
263	" 1,000	" "	" "	" " " " "
264	" 1,000	" "	" "	" " " " "
265	" 1,000	" "	" "	" " " " "
266	" 1,000	" "	" "	" " " " "
456	" 1,000	" "	" "	" " " " "
515	" 1,000	" "	" "	" " " " "
517	" 1,000	" "	" "	" " " " "
159, 160, 163, 164, 251, 45, 46, 47, 48	" 500 00 each...	" "	" "	No coupons attached.
467, 499, 518, 526, 527	" 1,000 00 each...	" "	" "	2 coupons to each bond, $40.00 ea., 1 July, '73, & 1 Jan'y, '74.
175, 177, 179, 182, 294, 295, 297, 298	500 00 each...	" "	" "	6 of 20.00 to ea. bond, semi-an., fr. 1 July, '74, to 1 Jan'y, '77.
299, 432, 437, 510, 511	1,000 00 ea.....	" "	" "	8 of 40 to ea. b'd, due semi-an., from 1 July, '73, to Jan'y, '77.
83, 85, 86, 90, 25, 26, 27, 28	500 ea.....	" "	" "	8 coupons of 20 to ea. b'd, due semi-an., from 1 July, '74, to 1 Jan'y, '78.
327, 328, 426, 507, 508, 565, 566	1,000 ea.....	" "	" "	8 coupons of 40 to ea. bond, due semi-an., from 1 July, '74, to Jan'y, '78.

Exhibit A to Original Bill—Continued.

No. of bond.	Denomination.	Date of bond.	Date of maturity.	No. of coupons.
43				
179, 330, 331, 332, 333, 334, 335, 337, 416, 417	1,000 00 ea.....	1st Jan'y, '72	1st Jan'y, '79	10 coupons, 40.00, to ea. bond, due semi-an'y, fr. 1 July, '74, to 1 Jan., '79.
60, 61, 62, 63, 64, 66, 350	500 00 ea.....	" "	" 1880	12 " 20.00 " " " 1880.
351, 352, 353, 354, 362, 402, 403, 586, 587	1,000 00 ea.....	" "	" "	12 " 40.00 " " " "
36, 209, 208, 210	500 00 ea.....	" "	" 1881	14 " 20.00 " " " 1881.
206, 207, 208, 209, 210, 593, 595, 596, 597, 599	1,000 00 ea.....	" "	" "	14 " 40.00 " " " "
215, 216, 217, 219	500 00 ea.....	1 Jan'y, 1872	1 Jan'y, 1874	2 coupons, 20.00 ea., to each bond, due 1 July, '73, & 1 Jan'y, '74.
1, 2, 3, 4	1,000 00 ea.....	" "	" "	2 " " " " " " " "
53, 221, 253, 72	500 00 ea.....	" "	" 1875	3 " 20.00 " 1 Jan'y & 1 July, '74, & 1 Jan'y, '75.
73, 74, 76	1,000 00 ea.....	" "	" 1875	3 " 40.00 " " " " " "
77, 171, 239	500 00 ea.....	" "	" 1876	5 " 20.00 " from 1 July, '73, semi-annually, to 1 Jan'y, '76.
87, 88, 99	1,000 00 ea.....	" "	" 1876	6 " 40.00 " " " " " "
100, 223	500 00.....	" "	" 1877	7 " 20.00 " 1 Jan'y, '74, semi-annually, to 1 Jan'y, '77.
176	500 00.....	" "	" "	7 " " " " " " " "
178	500 00.....	" "	" "	8 " " " 1 July, '73, " "
44				
122, 123, 124, 125, 132	1,000 ea.....	1 Jan'y, 1872	1 Jan'y, 1877	7 coupons, 40.00 ea., to each bond, due 1 Jan'y, '74, semi-annually, to 1 Jan'y, 1877.
111, 112, 114, 115, 116, 118, 120, 121	1,000 00 ea.....	" "	" "	8 " 40.00 " 1 July, '73, " "

Exhibit A to Original Bill—Continued.

No. of bond.	Denomination.	Date of bond.	Date of maturity.	No. of coupons.
185, 186, 187, 257	500 00 ea.....	1 Jan'y, 1872	1 Jan'y, 1878	10 coupons, 20.00 ea., to each bond, due 1 July, '73, semi-annually, to 1 Jan'y, 1878.
258, 335, 139	500 00.....	" "	" "	9 " 20.00 " 1 Jan'y, '74, " 1878.
140, 141, 142, 143, 144	1,000 00 ea.....	" "	" "	10 " 40.00 " 1 July, '73, " 1878.
145, 146, 147, 148, 149				
192, 193, 194, 197	500 00 ea.....	" "	" 1879	12 " 20.00 " " " " 1879.
155, 159, 165, 166, 167, 168, 169, 172, 173, 174	10 of 1,000 00 each.....	" "	" "	12 " 40.00 " " " " 1879.
201	500	1 Jan'y, 1872	1 Jan'y, '80	14 coupons, 20.00 each, due from 1 July, '73, semi-annually, to 1 Jan'y, 1880.
182, 183, 195, 196	1,000 00 each.....	" "	" "	13 " 40.00 ea., on ea. bond " "
197, 199, 190, 191	1,000 00 ea.....	" "	" "	14 " 40.00 " 1 July, '73, " 1880.
192, 198, 211	500 00.....	" "	" 1881	16 " 20.00 " " " " 1881.
29, 30, 31, 32, 211, 212, 213, 214, 215, 216	1,000 00 ea.....	" "	" "	15 " 40.00 " 1 Jan'y, '74, " 1881.
52, 230, 240	1,000 00 ea.....	" "	" 1874	1 " 40.00 " 1 Jan'y, 1874.
45, 29	500 00.....	1 Jan'y, 1872	1 Jan'y, 1875	3 coupons, 20.00 each, due 1 Jan'y & July, '74, & 1 Jan'y, '75.
262	1,000 00.....	" "	" "	3 " 40.00 " " " "
62, 69	1,000 00.....	" "	" "	3 " 40.00 " " " "
92, 101, 218	1,000 00 ea.....	" "	" 1876	5 " 40.00 ea. on ea. bond, due from 1 Jan'y, '74, semi-an'ly, to 1 Jan'y, 1876.
9, 10, 11	1,000 00 ea.....	" "	" 1877	7 " " " " " " 1877.
32	500 00.....	" "	" 1878	9 " 20.00 " " " 1878.
134, 136, 137, 138	1,000 00 ea.....	" "	" "	9 " 40.00 " " " 1878.
21, 22, 23, 24	1,000 00 ea.....	" "	" 1879	11 " 40.00 " " " 1879.
17, 18, 19, 20	1,000 00 ea.....	" "	" 1880	13 " 40.00 " " " 1880.

Exhibit A to Original Bill—Continued.

No. of bonds.	Denomination.	Date of bond.	Date of maturity.	No. of coupons.
219, 220, 222, 223	1,000 00 ea	1 Jan'y, 1872	1 Jan'y, 1881	15 coupons, 40.00 ea. on ea. bond, due from 1 Jan'y, '74, semi-an'ly, to 1 Jan'y, 1881.
531	1,000 00	" "	" 1874	No coupons attached.
532, 256	1,000 00 ea	" "	" "	2 coupons, 40.00 ea. to each bond, due 1 July, '73, & 1 Jan'y, '74.
468	500	" "	" '75	1 " 20.00 " " " '75.
614, 615, 617	1,000 00 ea	" "	" '75	4 " 40.00 ea. to each bond, from 1 July, '73, semi-ann'y, to 1 Jan'y, '75.
158, 240, 243, 244, 246	100 00 ea	" "	" '76	6 " 4.00 " " " '76.
333	500 00	" "	" "	6 " 20.00 " " " '76.
350, 352	1,000 00 ea	" "	" "	6 " 40.00 " " " '76.
110, 332	500 00 ea	" "	" '77	8 " 20.00 " " " '77.
563	1,000 00	" "	" '77	8 " 40.00 " " " '77.
132, 151, 280, 290, 298	100 00 ea	" "	" '78	10 " 4.00 " " " '78.
84, 87, 92	500 00 each	" "	" '78	10 " 20.00 " " " '78.
634	1,000 00	" "	" "	10 " 40.00 " " " '78.
42	500 00	" "	" '79	12 " 20.00 " " " '79.
637, 638, 671	1,000 00 ea	" "	" '79	12 " 40.00 " " " '79.
46, 62, 66, 331, 332, 333	100 00 ea	1 Jan'y, '72	1 Jan'y, '80	14 coupons, 4.00 ea. to ea. bond, from 1 July, '73, semi ann'y, to 1 Jan'y, '80.
457	500 00	" "	" "	14 " 20.00 " " " '80.
641, 645	1,000 00 ea	" "	" "	14 " 40.00 " " " '80.
226, 648, 650	1,000 00 ea	" "	" '81	16 " 40.00 " " " '81.
469, 470	500 00 ea	" "	" '74	2 coupons of 20.00 ea. on ea. b'd, due 1 July, '73, & 1 Jan'y, '74.
520, 611	1,000 00 ea	" "	" "	" " 40.00 " " " "
13, 154, 218, 220, 221	100 00 ea	" "	" '75	4 " 4.00 " " from 1 July, '73, semi-ann'y, to 1 Jan'y, '75.
499	500 00	" "	" "	4 " 20.00 " " " "
657, 658	1,000 00 ea	" "	" "	4 " 40.00 " " " "
620, 622, 623	1,000 00 ea	" "	" '76	6 " 40.00 " " " '76.
252, 261, 271, 275, 276	100 00 ea	" "	" '77	8 " 4.00 " " " '77.
662, 664, 665	1,000 00 ea	" "	" "	8 " 40.00 " " " '77.
153, 421, 632	1,000 00 ea	" "	" '78	10 " 40.00 " " " '78.
53, 307, 311, 312, 313	100 00 ea	" "	" '79	12 " 4.00 " " " '79.

Exhibit A to Original Bill—Continued.

No. of bonds.	Denomination.	Date of bond.	Date of maturity.	No. of coupons.
39	500 00	1 Jan'y, '72	1 Jan'y, '79	12 coupons of 20.00 ea. on ea. b'd, from 1 July, '73, semi ann'y, to 1 Jan'y, '79.
669, 670	1,000 00 ea	" "	" "	12 " 40.00 " " " '79.
397, 399, 400	1,000 00 ea	" "	" 1880	14 " 40.00 " " " 1880.
54, 598, 600, 678	500 00	" "	" 1881	16 " 20.00 " " " 1881.
	1,000 00 each	" "	" "	16 " 40.00 " " " 1881.

47 EXHIBIT B TO ORIGINAL BILL.

List of the Mississippi Levee Bonds and Coupons.

German Bank of Memphis.

AMOS WOODRUFF, Trustee, }
v.
STATE OF MISSISSIPPI *et al.* }

45 bonds, due July, 1872, $1,000 each, Nos. 750 to 754, 758, 759, 761 to 793, 796 to 800	$45,000	
2 bonds, due July, 1872, $100.00 each, Nos. 94, 412	200	
1 bond, due July, 1872, No. 301	64	75
1 bond, " " 1872, No. 302	25	
2 bonds, due Jan., 1878, Nos. 314, 317 ($1,000.00)	2,000	
3 bonds, $500 each, due Jan., 1880, Nos. 276, 376, 377	1,500	
3 bonds, $1,000 each, due Jan., 1881, Nos. 390, 393, 591	3,000	
3 bonds, $100 each, due Jan., 1881, Nos. 71, 72, 73	300	
Total bonds	$52,089	75

Past-due coupons.

5 coupons, $40 ea., due Jan'y, 1872:

Nos. 1 777, 3 777, 7 777, 9 777, 17 777 ..... $200

4 coupons, $40 ea., due July, 1872:

Nos. 4 777, 12 777, 16 777, 18 777 160

309 coupons, due Jan'y, 1873, $40 each:

762, 756, 754, 781, 785, 784, 784, 759, 761, 755, 785, 776, 767, 781, 781, 606, 791, 781, 783, 791, 757, 785, 791, 788, 759, 781, 788, 784, 760, 780, 783, 759, 780, 785, 773, 788, 773, 792, 752, 785, 782, 788, 788, 766, 785, 788, 785, 773, 788, 766, 606, 791, 756, 750, 767, 755, 784, 760, 767, 759, 753, 767, 775, 752, 775, 766, 778,

758, 768, 768, 789, 779, 756, 792, 763, 750, 763, 775,
759, 750, 792, 763, 760, 754, 754, 780, 780, 759, 758,
786, 754, 782, 789, 757, 778, 758, 785, 753, 755, 755,
753, 753, 786, 757, 602, 602, 602, 602, 787, 787, 602,
602, 602, 787, 787, 787, 787, 787, 787, 787, 787, 771,
771, 711, 771, 771, 602, 602, 602, 772, 774, 772, 772,
772, 772, 771, 771, 607, 607, 607, 772, 772, 772, 772,
772, 607, 771, 771, 771, 782, 784, 778, 755, 791, 788,
773, 776, 750, 773, 767, 606, 782, 789, 606, 786, 758,
761, 763, 782, 606, 794, 788, 779, 757, 606, 767, 762,
762, 773, 606, 761, 761, 606, 754, 766, 779, 783, 784,
755, 759, 760, 784, 757, 759, 758, 761, 781, 750, 752,
757, 775, 754, 761, 754, 756, 755, 766, 755, 776, 776,
786, 782, 768, 758, 783, 752, 778, 786, 776, 751, 792,
789, 779, 766, 758, 789, 763, 786, 783, 766, 782, 783,
781, 785, 773, 767, 757, 759, 760, 785, 761, 755, 784,
760, 773, 767, 760, 761, 753, 776, 768, 759, 761, 763,
766, 794, 776, 751, 780, 779, 752, 779, 778, 776, 788,
754, 789, 776, 606, 757, 754, 775, 778, 768, 775, 750,
754, 783, 757, 756, 794, 792, 792, 786, 762, 773, 781,
781, 781, 781, 783, 762, 785, 776, 755, 751, 760, 762,
783, 767, 752, 751, 782, 782, 751, 752, 778, 752, 775. $12,360

48 281 coupons, due July, 1873, $40 each:

Nos. 763, 768, 784, 773, 767, 783, 757, 781, 766, 785, 785,
782, 791, 782, 760, 759, 757, 759, 782, 757, 785, 606,
756, 750, 781, 788, 788, 780, 785, 767, 762, 755, 768,
755, 766, 785, 750, 762, 760, 784, 761, 791, 791, 754,
766, 788, 753, 778, 754, 763, 757, 779, 754, 754,
763, 779, 791, 758, 776, 756, 775, 792, 750, 780, 763,
789, 766, 792, 750, 752, 752, 759, 768, 758, 758, 758,
767, 786, 782, 768, 758, 788, 763, 753, 750, 753, 753,
755, 755, 755, 753, 753, 786, 767, 767, 767, 757, 770,
602, 602, 602, 602, 787, 787, 602, 602, 602, 787, 787,
787.

Coupons forw'd $12,720

Forw'd $12,720

Coupons due July, 1873, $40 each, continued:

Nos. 787, 787, 787, 787, 771, 771, 771, 771, 771, 602, 602,
607, 774, 772, 772, 772, 772, 771, 607, 607, 607, 772,
607, 772, 772, 772, 771, 771, 771, 788, 762, 755, 781,
785, 766, 786, 780, 776, 776, 606, 761, 755, 778,
606, 786, 773, 789, 760, 760, 782, 780, 761, 606, 773,
786, 773, 761, 758, 773, 760, 773, 755, 751, 783, 783,
783, 766, 781, 791, 760, 775, 775, 606, 781, 752, 784,
784, 761, 756, 781, 768, 754, 751, 751, 788, 766, 783,
794, 782, 786, 791, 754, 763, 766, 773, 785, 792, 606,
766, 789, 789, 791, 776, 788, 785, 786, 775, 788, 768,
756, 759, 785, 782, 760, 757, 753, 759, 778, 778, 758,

762, 762, 776, 784, 756, 776, 776, 776, 775, 758, 779,
779, 779, 780, 756, 767, 761, 786, 752, 763, 789, 789,
784, 763, 754, 752, 789, 791, 784, 773, 783, 781, 762,
788, 759, 752, 759, 763, 606, 778, 759, 754, 750, 760,
750, 760, 783, 778, 783, 751 8,430
One coupon, due July, 1877, No. 748..... 40
One coupon, due Jan., 1881, No. 390 40

197 coupons, $4 each, due Jan'y, 1872:

Nos. 390, 391, 390, 391, 451, 451, 454, 445, 390, 177, 175,
445, 390, 177, 454, 454, 451, 454, 177, 454, 451, 451,
451, 175, 175, 175, 175, 175, 391, 391, 177, 445, 175,
451, 445, 177, 177, 177, 389, 442, 180, 185, 389, 389,
389, 462, 465, 462, 441, 444, 415, 446, 444, 465, 466,
462, 410, 389, 442, 174, 388, 169, 441, 443, 180, 180,
448, 178, 447, 462, 176, 441, 448, 442, 442, 180, 498,
498, 448, 389, 389, 466, 498, 497, 441, 464, 443, 178,
447, 388, 388, 443, 174, 180, 498, 178, 410, 462, 443,
443, 443, 181, 410, 181, 389, 388, 497, 464, 497, 108,
410, 185, 462, 446, 448, 500, 174, 446, 464, 464, 178,
500, 500, 168, 497, 465, 442, 462, 499, 388, 444, 168,
168, 178, 464, 174, 410, 410, 178, 448, 446, 497, 466,
180, 178, 180, 497, 181, 442, 462, 441, 441, 464, 464,
388, 447, 447, 181, 465, 500, 500, 444, 410, 444, 444,
465, 446, 463, 473, 168, 463, 448, 462, 447, 411, 389,
180, 453, 453, 185, 444, 174, 411, 444, 178, 441, 464,
499, 181, 180, 411, 442, 176, 463, 448, 448... .... $788

Coupons forw'd.... .... $22,018

49 Forward..... .... $22,018

188 coupons, $4 each, due July, 1872:

Nos. 391, 391, 300, 445, 454, 454, 454, 454, 454, 177, 391,
177, 177, 177, 454, 391, 390, 451, 451, 157, 175, 175,
391, 175, 175, 391, 390, 391, 177, 175, 175, 177, 462,
462, 389, 442, 389, 389, 389, 462, 444, 444, 448, 440,
464, 499, 468, 466, 388, 497, 388, 389, 447, 447, 447,
468, 463, 176, 448, 180, 388, 388, 480, 474, 498, 388,
389, 389, 389, 497, 464, 178, 464, 443, 443, 463, 178,
181, 443, 174, 442, 174, 180, 180, 198, 388, 388, 174,
178, 462, 462, 442, 442, 442, 464, 443, 410, 410, 181,
466, 411, 462, 444, 448, 444, 465, 442, 500, 497, 446,
446, 500, 497, 464, 174, 464, 462, 466, 500, 448, 500,
499, 411, 500, 497, 447, 185, 464, 178, 176, 174, 443,
465, 444, 410, 410, 448, 178, 180, 442, 465, 178, 168,
464, 444, 463, 447, 462, 181, 163, 441, 465, 500, 185,
444, 178, 411, 388, 178, 181, 498, 410, 463, 463, 168,
178, 180, 448, 185, 462, 446, 444, 485, 465, 464, 463,
465, 448, 441, 417, 410, 389, 180, 153, 463, 448, 453,
448 .... $752

Coupons forw'd.... .... $22,770 00

350 coupons, due Jan'y, 1873, $4 each:

Nos. 478, 475, 167, 371, 475, 173, 403, 481, 403, 371, 371,
371, 170, 371, 478, 480, 475, 169, 171, 171, 173, 173,
480, 480, 480, 171, 475, 169, 494. 167, 463, 170, 403,
403, 169, 494, 170, 170, 167, 494, 195, 195, 169, 191,
494, 195, 381, 375, 488, 432, 432, 490, 432, 432, 432,
487, 409, 488, 380, 477, 490, 166, 374, 476, 484, 486,
477, 487, 465, 408, 379, 484, 381, 487, 408, 376, 407,
376, 432, 487, 409, 166, 378, 378, 384, 488, 372, 373,
378, 487, 372, 372, 375, 190, 372, 482, 381, 486, 486,
408, 408, 476, 380, 408, 490, 477, 407, 379, 379, 375,
408, 380, 476, 376, 488, 490, 495, 495, 379, 477, 477,
477, 495, 495, 476, 405, 405, 372, 476, 487, 486, 486,
482, 482, 496, 409, 488, 409, 496, 482, 408, 408, 407,
407, 490, 374, 380, 487, 487, 486, 409, 409, 381, 496,
495, 486, 407, 496, 486, 432, 495, 384, 379, 484, 407,
372, 490, 490, 482, 482, 374, 381, 482, 381, 374, 490,
486, 372, 381, 166, 371, 169, 480, 373, 373, 383, 172,
171, 171, 481, 380, 405, 374, 487, 496, 477, 381, 432,
483, 384, 376, 384, 376, 409, 371, 383, 385, 383, 383,
481, 172, 475, 192, 481, 171, 371, 192, 172, 173, 480,
379, 496, 490, 405, 166, 173, 385, 385, 385, 383, 172,
383, 383, 172, 403, 481, 494, 167, 481, 481, 478, 494,
191, 483, 483, 484, 488, 379, 407, 407, 381, 495, 191,
166, 380, 192, 195, 191, 481, 173, 385, 383, 383, 383,
383, 385, 385, 385, 478, 478, 373, 192, 192, 191, 494,
171, 167, 195, 195, 373, 169, 371, 173, 373, 573, 480,
403, 171, 494, 478, 172, 169, 195, 383, 378, 378, 475,
173, 169, 192, 167, 167, 170, 169. 494, 195, 192, 403,
192, 480, 478, 171, 171, 409, 374, 190, 408, 476, 483,
490, 378, 432, 407, 483, 190, 378, 495, 310 1,400

Forward..... $24,170 00

50 Coupons forw'd..... $24,170 00

310 coupons, due July, 1873, $4 each:

Nos. 475, 478, 171, 171, 373, 475, 167, 173, 478, 371,
371, 171, 171, 173, 403, 195, 167, 167, 167, 167, 191,
191, 192, 192, 403, 191, 195, 195, 195, 195, 191, 169,
494, 408, 378, 432, 432, 488, 422, 409, 197, 409, 490,
488, 432, 375, 477, 487, 432, 486, 486, 496, 166, 376,
195, 166, 166, 378, 376, 166, 376, 487, 374, 372, 495,
482, 484, 372, 372, 190, 408, 190, 477, 409, 488, 379,
408, 488, 380, 408, 405, 380, 490, 495, 495, 490, 379,
477, 495, 495, 495, 432, 381, 476, 482, 476, 405, 495,
496, 486, 482, 486, 488, 409, 486, 409, 482, 407, 490,
407, 477, 408, 407, 380, 380, 409, 409, 381, 408, 372,
496, 486, 488, 476, 190, 378, 374, 487, 379, 484, 407,
384, 482, 490, 381, 490, 374, 387, 381, 384, 183, 374,
372, 371, 475, 173, 167, 383, 494, 383, 173, 494, 494,

478, 476, 378, 405, 487, 380, 376, 384, 379, 476, 408,
379, 484, 376, 376, 384, 190, 409, 409, 379, 383, 385,
385, 383, 192, 383, 481, 371, 173, 192, 169, 403, 192,
481, 174, 170, 385, 481, 385, 383, 383, 494, 481, 385,
481, 480, 403, 373, 475, 494, 373, 371, 169, 373, 478,
192, 478, 481, 475, 173, 172, 173, 172, 173, 170, 403,
169, 171, 170, 171, 167, 475, 173, 170, 191, 195, 191,
169, 496, 407, 172, 385, 378, 181, 480, 403, 380, 166,
172, 195, 192, 172, 481, 383, 170, 383, 481, 385, 385,
385, 478, 191, 173, 192, 169, 167, 403, 170, 373, 172,
373, 172, 480, 480, 480, 494, 167, 480, 373, 171, 371,
192, 169, 169, 169, 403, 195, 403, 195, 494, 478, 371,
494, 191, 170, 170, 170, 170, 480, 480, 478, 480, 172,
374, 405, 476, 488, 432, 166, 405, 498, 480, 472, 381,
483, 490, 378 1,240

Coupons forw'd..... ..... $25,410 00

346 coupons, due Jan'y, 1874, $4 each:

Nos. 227, 227, 222, 252, 251, 263, 252, 219, 211, 218, 264,
264, 223, 221, 227, 264, 220, 228, 251, 220, 260, 265,
264, 291, 264, 218, 218, 221, 221, 224, 223, 210, 235,
235, 253, 291, 227, 236, 227, 228, 260, 221, 262, 224,
265, 220, 223, 222, 254, 212, 263, 223, 260, 224, 222,
224, 222, 237, 212, 211, 211, 250, 238, 214, 226, 236,
221, 264, 264, 218, 265, 237, 265, 237, 228, 255, 220,
211, 212, 211, 217, 240, 222, 260, 252, 237, 220, 263,
251, 263, 237, 261, 281, 237, 264, 258, 237, 236, 216,
263, 258, 210, 256, 256, 258, 224, 228, 210, 264, 291,
221, 250, 251, 236, 211, 210, 291, 219, 219, 256, 218,
253, 253, 214, 210, 218, 263, 221, 217, 251, 238, 238,
218, 218, 222, 208, 236, 219, 221, 251, 251, 259, 259,
213, 211, 228, 255, 261, 261, 226, 226, 261, 217, 235,
236, 236, 221, 212, 212, 211, 215, 215, 213, 222, 255,
228, 259, 259, 259, 254, 218, 216, 216, 217, 266, 235,
213, 214, 215, 215, 217, 224, 287, 256, 260, 235, 209,
255, 254, 222, 211, 214, 214, 251, 209, 209, 209, 213,
240, 256, 214, 213, 214, 254, 226, 213, 213, 238, 208,
260, 228, 210, 212, 129, 214, 212, 216, 253, 253, 259,
258, 226, 255, 254, 235, 246, 254, 210, 226, 228, 258,
225, 225, 291, 208, 238, 219, 212, 291, 219, 262, 254,
291, 251, 219, 220, 220, 291, 220, 258, 246, 214, 225,
208, 228, 238, 246, 206, 206, 206, 238, 186, 182, 182,
182, 182, 182, 206, 204, 205, 205, 205, 205, 207, 207,
207, 205, 205, 207, 207, 205, 207, 207, 203, 203, 202,
202, 202, 200, 201, 201, 199, 200, 186, 186, 199, 186.

51 Coupons forw'd..... ... $25,410 00

Coupons due Jan'y, 1874, continued:

206, 182, 182, 182, 182, 182, 201, 236, 236, 210, 215, 261,
226, 261, 253, 218, 198, 198, 198, 201, 201, 198, 201, 201,

203, 203, 200, 202, 202, 203, 198, 201, 200, 202, 199, 200,
201, 186, 201, 203, 201, 203, 202, 199, 199, 203, 202, 198,
202 .... 1,384 00

315 coupons, due July, 1874, $4 each:

Nos. 215, 259, 259, 254, 218, 216, 258, 215, 217, 224, 216,
256, 260, 263, 222, 208, 222, 208, 222, 222, 222, 211, 214,
212, 217, 217, 213, 213, 226, 254, 213, 251, 238, 251, 212,
226, 219, 251, 251, 261, 240, 253, 253, 219, 253, 214, 217,
258, 258, 240, 211, 228, 235, 235, 213, 262, 225, 219, 251,
250, 240, 246, 219, 238, 212, 254, 291, 238, 226, 217, 219,
221, 220, 219, 258, 223, 226, 219, 251, 209, 254, 246, 246,
206, 206, 206, 206, 295, 186, 182, 182, 182, 182, 182, 182,
205, 205, 205, 205, 207, 207, 205, 205, 207, 207, 207, 207,
201, 186, 224, 291, 236, 246, 261, 261, 262, 211, 246, 250,
198, 206, 198, 201, 199, 203, 199, 199, 201, 198, 200, 200,
180, 203, 203, 203, 203, 203, 201, 200, 202, 201, 202, 198,
198, 202, 203, 199, 218, 227, 227, 263, 252, 220, 218, 252,
223, 227, 264, 263, 210, 209, 221, 218, 220, 228, 237, 264,
281, 218, 221, 236, 262, 238, 224, 255, 208, 235, 235, 236,
209, 227, 221, 236, 260, 250, 220, 228, 261, 217, 223, 223,
237, 258, 260, 252, 258, 236, 222, 258, 264, 251, 237, 237,
252, 211, 228, 236, 264, 218, 265, 265, 220, 212, 240, 237,
209, 263, 256, 264, 264, 264, 253, 237, 261, 252, 261, 264,
265, 237, 291, 238, 250, 256, 210, 254, 218, 264, 218, 221,
250, 250, 221, 210, 291, 219, 219, 253, 236, 254, 263, 211,
210, 256, 237, 223, 221, 228, 251, 238, 238, 205, 207, 203,
201, 203, 199, 201, 200, 200, 202, 260, 186, 206, 206, 182,
182, 182, 198, 200, 216, 218, 216, 216, 209, 260, 238, 259,
259, 208, 262, 253, 226, 208, 210, 261, 255, 263, 255, 226,
236, 224, 235, 212, 211, 213, 247, 213, 212, 212, 221, 211,
235, 215, 215, 213..... 1,260 00

320 coupons, due January, 1875, $4 each:

Nos. 118, 229, 239, 118, 242, 245, 239, 242, 242, 242, 242,
242, 241, 239, 239, 239, 245, 245, 244, 244, 244, 243,
241, 241, 239, 245, 239, 239, 196, 196, 192, 196, 197,
196, 197, 185, 185, 180, 193, 193, 192, 193, 197, 197,
197, 193, 193, 193, 116, 118, 119, 117, 119, 85, 120,
124, 115, 124, 115, 115, 57, 109, 114, 110, 112, 115,
114, 224, 114, 113, 114, 113, 123, 122, 85, 113, 112,
115, 114, 119, 85, 124, 109, 85, 117, 114, 112, 123,
123, 112, 113, 113, 106, 85, 116, 116, 116, 123, 114,
113, 108, 108, 118, 119, 112, 248, 189, 242, 239, 194,
189, 189, 181, 181, 181, 181, 181, 181, 181, 181, 181,
181, 180, 180, 180, 180, 180, 180, 180, 180, 180, 189,
189, x89, x89, x94, x89, x96, x96, x89, x89, 300, 245,
188, 188, 188, 193, 188, 196, 196, 196, 179, 178, 267,
267, 267, 178, 178, 177, 178, 177, 266, 195, 266, 268,
178, 177, 113, 106, 183, 183, 183, 183, 183, 183, 183,
183, 183, 184, 183, 184, 184, 184, 184, 184, 184, 184,

187, 187, 187, 187, 266, 195, 268, 268, 268, 268, 177,
179, 177, 266, 268, 178, 268, 179, 195, 268, 108, 105,
110, 110, 105, 110, 111, 85, 106, 109, 110, 121, 114,
109, 125, 125, 57, 107, 108, 106, 109, 122, 121, 108,
124, 111, 118, 108, 119, 105, 125, 108, 115, 105, 105, 107.

Forw'd.... ..... $28,054 00

52 Coupons forward $28,054 00

125, 111, 108, 119, 57, 111, 125, 107, 222, 109, 106,
122, 123, 110, 57, 239, 300, 241, 243, 241, 241, 115,
241, 119, 116, 120, 120, 120, 117, 85, 111, 120, 120,
127, 121, 127, 112, 105, 105, 106, 105, 111, 127, 125,
121, 122, 127, 127, 127, 127, 127, 127, 115, 112, 116,
113, 85, 125, 121, 117, 124, 124, 125, 115, 118, 119,
112..... 1,280 00

312 coupons, due July, 1875, $4 each:

Nos. 194, 181, 181, 181, 181, 181, 181, 181, 181, 180, 180,
180, 180, 180, 189, 189, 189, 194, 189, 189, 189, 189,
197, 189, 189, 196, 196, 188, 188, 196, 185, 267, 267,
267, 267, 178, 178, 178, 178, 188, 195, 195, 268, 197,
266, 177, 177, 177, 110, 112, 183, 183, 183, 183, 183,
183, 183, 183, 183, 184, 184, 184, 184, 184, 184, 184,
184, 185, 187, 187, 187, 195, 179, 268, 179, 268, 268,
268, 268, 177, 177, 179, 195, 179, 267, 177, 179, 179,
178, 178, 177, 266, 266, 266, 178, 195, 178, 268, 268,
179, 195, 179, 114, 120, 110, 85, 110, 106, 115, 106,
110, 124, 124, 112, 109, 106, 107, 113, 115, 125, 109,
120, 110, 109, 107, 108, 105, 105, 124, 108, 108, 110,
106, 108, 108, 105, 111, 118, 125, 109, 107, 106, 119,
114, 117, 121, 121, 125, 122, 57, 110, 109, 108, 124,
117, 113, 242, 181, 239, 248, 248, 241, 245, 241, 243,
249, 241, 241, 120, 118, 118, 105, 108, 107, 123, 120,
120, 127, 127, 127, 105, 106, 106, 108, 111, 105, 121,
122, 127, 111, 113, 111, 121, 119, 127, 127, 127, 127,
127, 124, 113, 114, 116, 112, 112, 118, 123, 123, 122,
121, 121, 121, 115, 115, 115, 117, 112, 116, 116, 85,
116, 119, 112, 106, 113, 113, 113, 106, 115, 125, 125,
107, 107, 85, 85, 114, 85, 85, 109, 112, 116, 113,
115, 114, 114, 114, 119, 114, 113, 117, 107, 105, 116,
120, 112, 125, 119, 124, 124, 115, 114, 117, 117, 117,
118, 116, 116, 185, 193, 193, 197, 193, 193, 192, 193,
180, 180, 180, 180, 196, 197, 196, 196, 196, 197, 196,
239, 241, 239, 243, 241, 242, 245, 245, 244, 244, 245,
239, 375, 242, 242, 239, 239, 243, 242, 239, 245, 241,
195, 112, 85, 122..... ..... 1,248 00

113 coupons, due January, 1876, $4 each:

Nos. 126, 130, 130, 130, 126, 126, 130, 126, 128, 128,
128, 130, 128, 126, 126, 120, 128, 128, 126, 130, 130,

	143, 188, 151, 144, 160, 144, 146, 166, 159, 166, 159, 144, 159, 158, 167, 160, 144, 144, 159, 146, 146, 160, 169, 165, 165, 166, 159, 168, 166, 159, 169, 169, 159, 146, 142, 144, 159, 144, 168, 168, 168, 168, 162, 162, 162, 167, 161, 169, 169, 168, 162, 165, 159, 165, 165, 151, 160, 168, 162, 151, 151, 162, 159, 162, 162, 169, 166, 166, 165, 151, 144, 167, 162, 143, 143, 151, 144, 157, 167, 167, 157, 167, 157, 157, 157, 157, 167, 166, 142, 143, 165.....	452 00
	Coupons forward	$31,034 00
53	Coupons forward	$31,034 00
	116 coupons, due July, 1876, $4 each:	
	Nos. 94, 130, 130, 126, 126, 126, 128, 130, 128, 130, 126, 128, 128, 128, 126, 126. 130, 130, 130, 130, 169, 146, 151, 151, 166, 166, 165, 159, 160, 160, 159, 144, 144, 144, 143, 146, 159, 146, 159. 146, 158, 143, 157, 159, 165, 165, 166, 168, 169, 169, 169. 162, 160. 151, 169, 167, 142, 143, 141, 144, 144, 169, 161, 168, 168, 162, 162, 162, 162, 169, 169, 168, 162, 169, 168, 151, 158, 159, 168, 168, 165, 151, 162, 162, 161, 151, 126, 166, 151, 161, 161, 146, 143, 158, 157, 166, 144, 160, 167, 167, 167, 160, 167, 167, 167, 157, 157, 141, 157, 157, 166, 166, 142, 143, 166, 165.....	464 00
	1 coupon, due January, 1877, No. 94.....	4
	1 coupon, due Jan., 1881, No. 71.....	4
	Total coupons.....	$31,506 00
	Total bonds.....	52,089 75
	Aggregate (including all interest since maturity).	$83,595 75

List of Bonds and Coupons of Mississippi Levee Board of District No. 1 Held by B. Richmond.

No. bonds.	When due.	No. coupons attached.	Amount of bonds.
353	Jan'y 1, 1881.	2 last coupons.....	$500 00
76	" "	" "	100 00
77	" "	" "	100 00
78	" "	" "	100
150	" "	" "	100
345	" "	" "	100
354	" "	" "	100
358	" "	" "	100
			$1,200 00

8 bonds, 96 coupons attached.

EXHIBIT C TO ORIGINAL BILL.

Summons.

Chancery Court.

AMOS WOODRUFF, Trustee, }
v.
STATE OF MISSISSIPPI *et al.* }

THE STATE OF MISSISSIPPI, }
Hinds County. }

To the sheriff of Warren county, Greeting:

You are hereby commanded to summon The Louisville, New Orleans and Texas Railroad Company, if to be found in your county, to be and personally appear before the chancery court, first district, Hinds county, at the court-house of said county, in the town of Jackson, on the first Monday of September, 1888, then and there to answer bill of complaint of Amos Woodruff, trustee, *et al.*, praying for relief from certain matters and things therein set forth, &c., &c. Herein fail not, and have you then and there this writ.

Issued under my hand and seal of said court, at office, in Jackson, the 17th day of Aug, 1888.

W. W. DOWNING, *Clerk*,
By RAMSEY WHARTON, *D. C.*

54 Executed this writ by handing a true copy of the same to Sam. Moore, acting agent of the within-named railroad company, this 27th day of August, 1888.

W. O. WORRELL, *Sh'ff*,
By W. W. McGEE, *D. S.*

Summons.

THE STATE OF MISSISSIPPI, }
Hinds County. }

Chancery Court.

To the sheriff of Hinds county, Greeting:

You are hereby commanded to summon—1, The State of Mississippi, by Dist. Att'y T. M. Miller; 2, W. W. Stone, auditor of public accounts; 3, W. L. Hemingway, State treasurer; and, 4, the Delta Pine Land Company, if to be found in your county, to be and personally appear before the chancery court, first district, Hinds county, at the court-house of said county, in the town of Jackson, on the first (?) Monday of September, 1888, then and there to answer bill of complaint of Amos Woodruff, trustee, *et al.*, who pray for relief from certain matters and things therein set forth. Herein fail not, and have you then and there this writ.

Issued under my hand and seal of said court, at office, in Jackson, the 17th day of August, 1888.

W. W. DOWNING, *Clerk*,
By RAMSEY WHARTON, *D. C.*

Rec'd Aug. 17, '88.
S. B. THOMAS, *Sh'ff.*

Executed personally upon Att'y Gen'l T. M. Miller, W. W. Stone, auditor of public accounts; W. L. Hemingway, State treasurer, and William Watson, secretary of the Delta & Pine Co., and by handing to each a copy of this writ, Aug. 20, 1888.

S. B. THOMAS, *Sh'ff*,
By W. McRAVEN, *D. S.*

To which were filed the following demurrers:

STATE OF MISSISSIPPI,
Hinds County.

Chancery Court, First District.

AMOS WOODRUFF *et al.*
v.
THE STATE OF MISSISSIPPI *et al.*

The State of Mississippi named *is* one of the defendants herein, by her attorney general, demurs to the said bill of complaint, and for cause of demurrer assigns the following, to wit:

1st. This honl. court has no jurisdiction to entertain this suit against the State, the right of action allowed by statute against her being limited to money demands for which the auditor has refused warrants.

2nd. The said bill of complaint is without equity upon its face, so far as the State is concerned.

3rd. The said suit is upon a stale demand, which ought not to be considered in equity.

4th. The complainants possessed and still possess a plain, adequate, and complete remedy at law, if they have not lost the same by their own laches.

5th. The said bill of complaint is multifarious in joining parties having no community of interest as def'ts.

5th. The said supposed bonds or writing obligatory upon
55 which said bill is brought were and are utterly void for want of power in said levee board to issue the same in the form issued, to wit, calling for payment in gold coin, especially when at the time of issuance gold coin was at a premium over the other lawful currency or moneys of the United States.

6th. The said supposed right of action is barred by the statute of limitations of six years, of seven years, and of ten years.

7th. Said bill of complaint is vague, uncertain, and indefinite in failing to show what land was sought to be subjected and in not accounting for such failure.

8th. For other and manifest causes to be shown at the hearing.

Wherefore she prays judgment if further response to the bill be required.

T. M. MILLER, *Att'y Gen'l.*

I hereby certify that in my opinion the above and foregoing demurrer is *all* taken in point of law.

T. M. MILLER,
Sol'r for Def'd't.

Hinds County Chancery Court, 1st District.

AMOS WOODRUFF *et al.*
v.
THE STATE OF MISSISSIPPI.

Demurrer of W. W. Stone, Auditor, and W. L. Hemingway, Treasurer, of the State of Mississippi.

The said def'd'ts, by protestation, &c., neither admitting nor denying the several or any of the allegations of said bill of complaint, say the same are insufficient in law to entitle the said complainants to the relief prayed for against them or to any other relief in a court of equity, & for special cause of demurrer they state the following, to wit:

1st. Relief is sought against them as such auditor and treasurer as incidental to relief against the State and the court has no jurisdiction of the said suit against the State.

2nd. There is no equity upon the face of the bill & the court is without jurisdiction of the subject-matter.

3rd. There is no law of the State in force which would confer upon them the power to perform the official duties sought to be required of them through the decree of this honl. court.

4th. The purpose of said bill is not to secure the adjudication of a right, but the enactment of a law *ultra vires* the court.

5th. If the complainants ever had a right based upon the possession or ownership of said bonds the remedy was at law & still exists unless lost by their own laches & neglect.

6th. The said pretended bonds of said levee board are null and void upon their face for want of authority in said board to make & issue bonds payable in gold coin, especially when, as at the date of issuance, gold coin was at a premium over other lawful currency or moneys of the United States.

7th. The said supposed cause of action upon which said suit is brought has become a stale demand, entitled to no countenance in a —, especially since under laws which, even if unconstitutional when passed, as to complainants they have stood by and allowed third persons to become the owners of the said land.

8th. No lien was reserved by said act of 1888 upon the lands deeded thereunder for moneys not the taxes for the years named therein.

9th. The said supposed cause of action is barred by the statute of

limitation of six years, of seven years, and of ten years; all of which is apparent upon the face of said bill of complaint.

56 10th. The said bill of complaint is vague, uncertain, and indefinite in failing to indicate the particular relief prayed & failing to specify the land sought to be charged and subjected and in failing to show specially why and in what cases the said sales under the decree of said chancery court did not pass title free from any claim of complainants.

11th. And for other & manifest causes apparent upon the face of the bill and to be shown on the hearing. Wherefore said defendants pray judgment whether they shall be required to make further answer to said bill.

12th. Because by section 5 of an act entitled "An act to quiet and settle the title to certain lands in the Yazoo delta, which were sold by the commissioners of the chancery court for the first district of Hinds county in the case of Joshua Green and others against Hemingway and Gibbs, treasurer and auditor and *ex officio* liquidating levee commissioners," approved March 2nd, 1888, it was provided that the said sales for the said liquidating levee tax should be valid notwithstanding any defect or irregularity in the same, and should not be impeached for any cause except that the tax for which the land was sold had been paid; so that it is now no objection to the title so conveyed under said decree that the sales were made on the wrong day or that the several sheriffs failed to give the bonds required.

W. W. STONE, *Auditor*,
W. L. HEMINGWAY, *Treasurer*,
By T. M. MILLER, *Att'y Gen'l.*

I certify that in my opinion the foregoing demurrer is well taken in point of law.

T. M. MILLER, *P. D.*

STATE OF MISSISSIPPI, }
Hinds Co. }

Chancery Court, 1st District. Sept. Term, 1888.

AMOS WOODRUFF & *al.* }
vs.
STATE OF MISSISSIPPI *et al.* }

The Demurrer of the Delta & Pine Land Company to the Bill Exhibited Against this Defendant by Amos Woodruff & al.

The said defendant demurs to said bill & prays judgment of the court if it shall make any further answer thereto, and shows the following causes of demurrer to said bill, to wit:

1st. There is no equity in the bill.

2nd. The court has no jurisdiction of the parties defendant or to the subject-matter in controversy.

3rd. The bill shows on its face that the land of defendant cannot be subjected to the claim of the complainants.

4th. It is an *attack* to collaterally attack the decree in the case of the suit of Joshua Green & *al.*, referred to in the bill.

5. It is an attempt to compel the auditor & treasurer — the State of Mississippi to exercise legal & official functions & duties relative to matters where the laws of Mississippi have not given them authority.

6. The act of 1867 expressly reserved the lands purchased by the Delta & Pine Land — under the Joshua Green decree from the taxes imposed by the law of March 17, 1871, creating levee district No. 1.

7. The bill is vague & ambiguous & fails to show what land of the Delta & Pine Land Company are sought to be effected by the complainants' bill and the extent of the tax or charge proposed to be imposed upon the same & in what cases the sale under the decree did not pass title.

8. Complainants have no other or further *vigor* for the se-
57 curity of their debt or for the collection of the same than are imposed by the law of March 17, 1871, & therefore have no equitable *vigor* to institute the present proceeding against the auditor & treasurer.

9. Bill fails to show and aver that the bonds they hold were negotiated & sold for 90 cents on the dollar, as provided in the act of March 17, 1871, & fails to show that the full amount of taxes imposed by said act have not been collected.

10. The bill expressly shows that the act of 1871 has been repealed, and attempts to force the auditor & treasurer to execute powers which the State has expressly taken away from them.

11. Shows that the land has been properly and legally sold under the decree in the Joshua Green case and fails to show any proper cause for setting said sale aside or objection to said decree.

12. Affirmatively shows that the lands of *complainants* cannot be reached or made liable for complainants' claim, and calls upon the court to execute powers which only a legislature can grant.

13. The plea set up in the bill in avoidance of the statute of limitations is not a sufficient bar to the same.

14. The pretended bond sued upon is null & void on its face for want of authority in the board to make and issue bonds payable in gold coin, particularly in a case where, at the time of issuance of the same, gold coin was at a premium over other lawful moneys or currency of the United States.

15. The demand sued upon is a stale demand & should not especially be allowed in cases where complainants have permitted in that complaint third persons to become purchasers of the land.

16. The cause of action alleged is barred by the statute of limitations of six, seven, and ten years, apparent on the face of the bill.

17. The bill is multifarious.

18. And for other causes apparent on the face of the bill, to be shown on the hearing.

FRANK JOHNSTON & J. R. YERGER,
Sol's for Delta & Pine Land Co.

I certify that in my opinion the foregoing is well taken in point of law.

J. R. YERGER, *Sol.*

19. Because by section 5 of an act of the Legislature entitled "An act to quiet and settle the title of certain lands in the Yazoo delta which were sold by the commissioners of the chancery court of Hinds county for the first district *county*, in the case of Joshua Green & *al.* against Gwinn & Hemingway & Gibbs, treasurer & auditor & *ex officio* liquidating levee commissioners," approved March 2, 1888, it was provided that the said supposed objections to said sale to the liquidating levee board should not be regarded—that is to say, said sales were declared to be valid notwithstanding any irregularities in the sale—so that it is no longer an objection that the sales were made on other days provided in said act of 1867, or that the sheriffs failed to give the bonds required.

In the Chancery Court of Hinds County, First District, State of Mississippi.

AMOS WOODRUFF *et al.*
v.
STATE OF MISSISSIPPI *et al.*

And now comes the defendants N. T. Burroughs and Wm. F. Swan to the above-entitled cause and say that the matters and things stated in the complainants' bill, in such manner and form as the same are therein and thereby set forth and alleged, are
58 not sufficient in law to entitle the complainants to any relief against or discovery from these defendants touching any of the said matters. Wherefore these defendants do demur to the said bill and pray the judgment of the court whether any other or further answer they ought to make thereto, and for causes of demurrer defendants assign the following:

1. Complainants do not show themselves to be creditors of levee board of district No. 1, nor entitled to any of the benefits of the act of March 17, 1871. Said act authorized the levee board to "borrow money," and to that end to issue "the bonds of said board to the amount of one million dollars;" but did not empower them to issue bonds calling for the payment of amounts acknowledged in "gold coin of the United States," thereby largely increasing the debt of the district.

2. The pretended bonds on which the suit is based were barred by the statute of limitations when the bill in this cause was exhibited.

3. The act of 1871 expired March 17, 1883, by the express provision of section 8, and the remedy provided by sec. 10 of the act expired with it. The remedy was exclusive of all others, and, having lapsed, complainants are remediless.

4. The collection of the State and county taxes only were by sec. 24 of the act suspended on lands purchased for or invested in the board; the liquidating levee tax was not suspended thereon in any way. The bill does not specify or designate any lands that were purchased

for or invested in the levee board of district No. 1, and is therefore too vague and indefinite to ground any right to relief upon it; but if it had such lands they could have been rightfully sold for the liquidating levee tax if not paid, and all such taxes must have been tendered with the bill if it is sought to impair the title of the liq. levee board.

5. The first tax under the said act of 1871 was due in September of that year, and could not in any way interfere with the liquidating levee tax levied by the act of February 13, 1867. This liquidating levee tax had for its support an existing vital tax demand on all the lands in the district, amounting to about $1 per acre, which was a tax *in rem* by express contract, superior to past or future State, county, or levee taxes; it was, so to speak, a first mortgage on the delta lands. It was perfectly competent for the Legislature to extend the time of proving up claims under the law, and no one could be injured by it; no vested rights were disturbed and the obligation of no contract impaired. On the contrary, every one interested was benefited.

6. The bill is vague, indefinite, and unreliable in its statements, is a fishing bill, and ought not to be maintained. It does not state—

A. The lands in district No. 1 on which the levee tax for the district had not been paid and which had been sold for such taxes, nor the dates of sale, nor, if sold, what has become of the lands.

B. The lands sold to the liquidating levee board, the date of sale, and the tax arrearages thereon asserted by said first district, nor the conflict, if any, between the titles of the two levee boards to the lands claimed by them.

C. The lands sold to the State under the abatement act and the arrearages of levee tax thereon, and the status thereof at the time of such sale—whether held by the State or levee board.

D. The particular infirmities in the titles of the liquidating levee board relied upon to sustain the complainants' case, so that the court might judge of the very questions presented.

7. The complainants nowhere in their bill state what the real subject-matter of the suit is. They file no lists of land, nor
59 do they refer to any on the files of the court that can be fully identified, nor do they present their case so that the issue could be joined for proof. While they allege ignorance, the allegation cannot aid them, because their pleading shows that the records referred to are public records, easily accessible, and that all the matters involved are readily within their reach.

8. The bill is multifarious, propounding several different and conflicting interests for adjudication and joining defendants whose titles to the very "many lands" sought to be litigated are directly antagonistic to one another, as well as the imaginary title relied on by complainants.

9. There is no equity on the face of the bill and no right to a discovery thereon.

10. The bill is so uncertain that no answer could be made to it and no decree could be based upon it if admitted. It is manifestly

framed to cast on the defendants the burden of making up the complainants' case, if they have any, and to inform them if they have no case.

11. Assuming that the lands administered in the case of Green *v.* Gibbs had been conveyed to the liquidating levee board in 1868, 1869, 1870, or later, it is too late to inquire into the validity of the titles, more than five years having expired from and after their sale. Acts of 1873, p. 153.

NUGENT & McWILLIE, *P. D.*

We hereby certify that in our opinion the above and foregoing demurrer is well taken in point of law.

NUGENT & McWILLIE, *P. D.*

WOODRUFF
v.
DELTA & PINE LAND CO. *et al.*

And now come the defendant, The Delta & Pine Land Co., herein and for further grounds *on* causes of demurrer to the complainants' bill says that the same is not sufficient, &c.

1st. Said bill shows on its face that complainants are barred by the five years statute of limitations from bringing their said bill against the title of this defendant, acquired through and under the liquidating levee commissioners. Acts of 1860, p. 213; Acts 1873, p. 153, & by the three years statute of 1871; Code 1871, sec. 1709.

FRANK JOHNSTON & J. R. YERGER, *Sol'rs.*

In the Chancery Court of Hinds County, First District, State of Mississippi.

AMOS WOODRUFF *et al.*
v.
STATE OF MISSISSIPPI.

And now come the defendants, The Louisville, New Orleans & Texas R. R. Co., to the above-entitled cause and say that the matters and things stated in the complainants' bill, in such manner and form as the same are therein and thereby set forth and alleged, are not sufficient in law to entitle the complainants to any relief against or discovery from these defendants touching any of these said matters. Wherefore these defendants do demur to the said bill and pray the judgment of the court whether any further answer they ought to make thereto, and for causes of demurrer defendants assign the following:

1. The complainants do not show themselves to be creditors of levee board of district No. 1, nor entitled to any of the benefits
60 of the act of March 17, 1871; said act authorized the levee board to "borrow money," and to that end to issue "the bonds of said board to the amount of one million dollars," but did not empower them to issue bonds calling for the payment of amounts

acknowledged in "gold coin of the United States," thereby largely increasing the debt of the district.

2. The pretended bonds on which the suit is based were barred by the statute of limitation when the bill in this case was exhibited.

3. The act of 1871 expired March 17, 1883, by the express provision of sec. 8, and the remedy provided by section 10 of the act expired with it. That remedy was exclusive of all others and, having lapsed, complainants are remediless.

4. The collection of the State and county taxes only were, by sec. 24 of the act, suspended on lands purchased for or invested in the board; the liquidating levee tax was not suspended thereon in any way. The bill does not specify or designate any lands that were purchased for or invested in the levee board of district No. 1, and is therefore too vague and indefinite to ground any right to relief upon it; but if it had such lands they could have been rightfully sold for the liquidating levee tax if not paid, and all such taxes must have been tendered with the bill if it is sought to impair the title of the liquidating levee board.

5. The first tax under the said act of 1871 was due in September of that year and could not in any way interfere with the liquidating levee tax levied by the act of February 13, 1867. This liquidating levee tax had for its support an existing vital tax demand on all the lands in the district, amounting to about $1.00 per acre, which was a tax *in rem*, by express contract, superior to past or future State, county, or levee taxes; it was, so to speak, a first mortgage on the delta lands. It was perfectly competent for the Legislature to extend the time of proving up claims under the law and no one could be injured by it; no vested rights were disturbed and the obligation of no contract impaired; on the contrary, every one was benefited.

6. The bill is vague, indefinite, and unreliable in its statement, is a fishing bill, and ought not to be maintained.

It does not state—

A. The lands in district No. 1 on which the levee tax for the district had not been paid and which had been sold for such taxes, nor the dates of sale, nor, if sold, what has become of the lands.

B. The lands sold to the liquidating levee board, the date of sale, and the tax arrearages thereon asserted by said first district, nor the conflict, if any, between the titles of the two levee boards to the lands claimed by them.

C. The lands sold to the State under the abatement act and the arrearages of levee tax thereon and the status thereof at the time of such sale—whether held by the State or levee board.

D. The particular infirmities in the titles of the liquidating levee board relied upon to sustain the complainants' case, so that the court might judge of the very questions presented.

(7.) The complainants nowhere in their bill state what the real subject-matter of the bill is. They file no lists of lands, nor do they refer to any on the files of the court that can be fully identified, nor do they present their case so that issue could be joined for proof. While they allege ignorance, the allegation cannot aid them, because their pleading shows that the records referred to are public records,

easily accessible, and that all the matters involved are readily within their reach.

(8.) The bill is multifarious, propounding several and conflicting interests for adjudication and joining defendants whose titles
61 to the very "many lands" sought to be litigated are directly antagonistic to one another, as well as the imaginary title relied on by complainants.

(9.) There is no equity on the face of the bill and no right to a discovery thereon.

(10.) The bill is so uncertain that no answer could be made to it and no decree could be based upon it if admitted. It is manifestly framed to cast on the defendants the burden of making up complainants' case, if they have any, and to inform them if they have no case.

(11.) Assuming that the lands administered in the case of Green *v.* Gibbs had been conveyed to the liquidating levee board in 1868, 1869, 1870, or later, it is too late to inquire into the validity of the titles. More than five years have expired from and after their sale. Acts 1873, p. 153.

(12.) This court has no jurisdiction to cause the assessment and collection of taxes, and defendant is not shown to own or claim any lands belonging to the trust fund under the act of 1871.

(13.) The complainants have neglected all proper means of redress, which, if timely applied, would have corrected the wrongs of which he complains, and is therefore guilty of inexcusable laches.

YERGER & PERCY,
Sol'rs for Defendants Railroad Company.

We hereby certify that we believe the foregoing demurrer is maintainable.

YERGER & PERCY,
Sol's for L., N. O. & T. R'y Co.

AMOS WOODRUFF, Trustee, *et al.*
v.
STATE OF MISSISSIPPI *et al.*

This day came on to be heard this cause on the separate demurrers of defendants; and, the court having heard the same, the same is taken upon submission, to be decided in vacation, briefs to be filed on both sides by September 17th, 1888.

Opinion.

In the Chancery Court of Hinds County, First District.

In the case of—

AMOS WOODRUFF
vs.
THE STATE OF MISSISSIPPI *et al.*

On demurrers to the bill of complaint.

The bill in this case seeks to compel the administration of a trust

for the payment of bonds and coupons of interest, amounting in all to some $600,000 00, issued by the board of levee commissioners No. one, created by the Legislature by act of March 17th, 1871. The auditor of public accounts and State treasurer are sought to be charged as trustees under subsequent legislation on the same subject, and this court is called upon to enforce the trust in order that the bonds and coupons may be paid.

The demurrers interpose several grounds of defense as a bar to the action. It will not be necessary to enumerate them. Several statutes of limitation are interposed, and, among others, the limitation of five years of the act of 1859.

Another ground of demurrer is that the bill does not show what particular lands are sought to be charged; that it does not describe the lands which are alleged to have been disposed of or bought at void sales; that no dates are given of said void sales of any particular lands. It may be that a large portion of these lands *were* held by the liquidating levee commissioners or their vendees for five years after these sales were made. If so it would be a bar to
62 this action. The reasons which have led me to this conclusion and authorities examined need not be given, as the decision in this case is not based upon the five years statute of limitations invoked by the demurrers. It serves only to show that the fact that it is impossible to determine whether the five years statute applies or not is a fatal defect in the bill, so far as the frame of it is concerned. It may be said that the same question could be raised by plea, and this is true if defendants were in law bound to plead. But the reason given by complainant for not giving dates of sales and descriptions of lands, &c., and for praying discovery is that he has not the required information, but that it is in the possession and under the control of the State with the auditor of public accounts. If this be true, then it is public record and accessible to complainant, and he has no right to pray discovery of matters which are as much within his power to acquire and know as of the defendants. Why should defendants furnish him with facts contained in a public record necessary to maintain his bill when such facts are equally accessible to complainant?

The demurrers, however, raise a more serious question. The act of the Legislature of March 17th, 1871, which creates the levee district No. one, under which these bonds were issued, provides that the board of levee commissioners shall have power to borrow money, and to that end may issue the bonds of said board; that the bonds may be negotiated, &c., but in no case shall any of them be negotiated or sold at a greater discount than ten per cent. The act does not authorize the issuance of bonds payable in any particular kind of money. The authority given is to borrow money and pay by the issuance of bonds.

These bonds show upon their faces that they were to be paid in gold coin of the United States. It is well settled that corporations cannot do anything except by express authority of law or by implication only when necessary to carry out the powers expressly conferred.

There was no express authority in this case to the levee board of district No. one to issue bonds payable in gold coin, and it nowhere appears that it was necessary to issue gold bonds in order to carry out the objects of the power to borrow money or to do aught else required to be done by the law. The authority was to borrow money, not gold coin. The tax authorized to be a charge upon the land in the district was not required to be paid in gold coin, but in money. Gold coin at that time was not currency in any portion of the United States except west of the Rocky mountains. Gold coin was at a premium over any other kind of legal money. It was comparatively scarce, and was bought and sold as a commodity and not used as a circulating medium. Why should these bonds be made payable only in the most valuable of all the kinds of legal-tender money and that most difficult to obtain? The debtors did not get the benefit of that kind of money. Why should they not have all the benefits of the law in paying the debt in the cheapest legal-tender money and in that easiest to obtain?

Suppose the "trade dollar" then in circulation on the Pacific coast should have been made a legal tender and these bonds had been issued payable in "trade dollars." It is well known that these trade dollars were coined only in a limited amount, and most of them were sent out of the country by the Chinese on account of the large quantity of pure silver which they contained. The consequence would have been that — could not have been obtained in sufficient quantities to pay off these bonds except at a ruinous premium. Yet the board of levee commissioners would have had as much authority under this law to issue bonds payable in "trade dollars," had they been legal tender, as they had to issue bonds payable in gold coin.

The question — not to what extent have the levee commissioners exceeded their authority, but have they exceeded it.

63 I think they have.

Without expressing any opinion on the other grounds of the demurrers I think, for the above reasons, they should be sustained, and the decree will be made accordingly.

Jan. 26th, 1889.

WARREN COWAN, *Chancellor.*

Order Submitting in Vacation.

AMOS WOODRUFF, Trustee, *et al.*
v.
THE STATE OF MISSISSIPPI. } 818.

This day came on to be heard this cause on the separate demurrers of defendants, and, the court having heard the same, the same is taken up on submission to be decided in vacation, briefs to be filed on both sides by September 17th, 1888.

Order Dismissing.

AMOS WOODRUFF, Trustee, *et al.*
v.
THE STATE OF MISSISSIPPI. } No. 818.

This cause, having been submitted to the court at the September term, 1888, on the demurrers of the defendants and the complainants' bill, and the same having been argued by counsel for the defendants as well as by counsel for the complainants, was taken under advisement by the chancellor, and, the same having been fully considered, it is now ordered and decreed that said demurrers be, and are hereby, sustained and said bill dismissed at complainants' costs, to be taxed, and for which execution may issue.

Ordered and decreed this the 31st day of January, 1889.

WARREN COWAN, *Chancellor.*

STATE OF MISSISSIPPI, }
Hinds County. }

1st District.

Know all men that we, Amos Woodruff, trustee; the German Bank, and B. Richmond, as principals, and S. S. Calhoon & M. Green, as sureties, are held and bound to the State of Mississippi; W. W. Stone, auditor of public accounts, and W. L. Hemingway, treasurer, of the State of Mississippi; the Louisville, New Orleans & Texas Railroad Company, the Delta Pine Land Company, N. T. Burroughs, W. F. Swan, & the other defendants in the cause hereafter named in the penal sum of one hundred dollars; for the payment of which, well & truly to be made, we bind ourselves, jointly & severally, by these presents. The condition of this obligation is such that whereas in the chancery court of Hinds county, 1st district, on the — day of ——, 1889, said obligees recovered a decree in a certain cause therein pending, wherein Amos Woodruff, trustee; The German Bank, and B. Richmond were complainants, and the obligees herein defendants, whereby the complainants' bill was dismissed; & said complainants have prayed & obtained an appeal to the next term of the supreme court to revise & reverse the said decree: Now, if said Amos Woodruff, trustee; German Bank, and B. Richmond shall prosecute said appeal to effect or, in case of failure therein, shall pay the costs of said appeal if the decree shall be affirmed as to them, then this obligation to be void; otherwise to remain in full force & virtue.

Witness our hands this Feb'y 25th, 1889.

AMOS WOODRUFF, *Trustee,*
By CALHOON & GREEN, *Att'ys.*
GERMAN BANK,
By CALHOON & GREEN, *Att'ys.*
B. RICHMOND,
By CALHOON & GREEN, *Att'ys.*
S. S. CALHOON.
M. GREEN.

64

The foregoing bond endorsed: Filed Feb'y 27, 1889. W. W. Downing, clerk, by Ramsey Wharton, D. C.

STATE OF MISSISSIPPI, }
Hinds County. }

I, W. W. Downing, clerk of the chancery court in and for said State and county, hereby certify the within and foregoing 117 pages to contain a full and true copy of the proceeding had and done in the case of Amos Woodruff, trustee, *et al. vs.* The State of Mississippi *et al.* as the same appears on file in my office, at Jackson, and numbered on the docket as No. 818.

[SEAL.] Witness my hand and official seal, at office, in Jackson, Miss., this the 18th M'ch, A. D. 1889.

W. W. DOWNING, *Clerk.*
RAMSEY WHARTON, *D. C.*

The foregoing record endorsed: No. 6014. Filed M'ch 29, 1889. Oliver Clifton, cl'k, by C. C. Campbell, D. C.

In the Chancery Court of Hinds County, 1st District.

AMOS WOODRUFF, Trustee, *et al.* }
vs.
THE STATE OF MISSISSIPPI *et al.* }

We hereby waive issuance and service of citation as to us, each waiving for his own client, in the above-styled cause on appeal to the April term, 1889, of the supreme court of the State of Mississippi from the decree sustaining the demurrer to original bill and dismissing the same.

NUGENT & McWILLIE,
For Swan & Burroughs.
FRANK JOHNSTON,
Sol'r for Delta & Pine Land Co.
T. M. MILLER,
Sol'r for State, Stone, & Hemingway.

In the Chancery Court of Hinds County, First District.

AMOS WOODRUFF, Trustee, *et al.* }
v.
THE STATE OF MISSISSIPPI *et al.* }

We hereby waive issuance and service of citation as to us for our own client in the above-styled cause on appeal to the April term, 1889, of the supreme court of Mississippi from the decree sustaining the demurrer to original bill and dismissing the same.

YERGER & PERCY,
Solicitors for L., N. O. & T. R. R. Co.

Endorsed: Filed M'ch 29, 1889. Oliver Clifton, cl'k, by C. C. Campbell, D. C.

65 *Proceedings in the Supreme Court.*

On the 29 day of March, 1889, there was filed in said cause the following "assignment of errors," to wit:

In the Supreme Court, 1st District.

AMOS WOODRUFF, Trustee, *et al.*
vs.
THE STATE OF MISSISSIPPI *et al.*

Comes the appellants, by solicitors, and assign for error:
1. The court erred in sustaining the demurrer.
2. The court erred in dismissing the bill.
And for other errors apparent, &c.

CALHOON & GREEN,
Sol'rs for Appellants.

And on Tuesday, April 2, 1889, a day of the regular April term, A. D. 1889, of said supreme court, the following order was entered, to wit:

AMOS WOODRUFF, Trustee, *et al.*
v.
STATE OF MISSISSIPPI *et al.* } 6014.

Argued orally by Mr. M. Green for the appellants, and Mr. W. G. Yerger for appellee L., N. O. & T. R'y Co.

And on April 3, 1889, the following order was made and entered, to wit:

AMOS WOODRUFF, Trustee, *et al.*
v.
STATE OF MISSISSIPPI *et al.* } 6014.

Argued orally by Mr. Frank Johnston and Mr. W. L. Nugent for appellees, and submitted on briefs by Mess. Calhoon & Green for appellants, and Mess. Nugent & McWillie, Yerger & Percy, Frank Johnston, and J. R. Yerger for appellees.

And on the 22 day of April, 1889, the following opinion was delivered and filed in said cause, to wit:

AMOS WOODRUFF
v.
STATE OF MISSISSIPPI. } 6014.

CAMPBELL, J., delivered the opinion of the court:

When "An act to redeem and protect from overflow from the River Mississippi certain bottom lands herein described," approved March 17, 1871, was passed and when the bonds embraced in this

suit were issued "gold coin" was not the basis of the business of the country. It was money, but of much greater value than the circulating medium, consisting of United States Treasury notes and national bank notes, of which we take judicial notice, because it is part of the public history known to all the world, and therefore including us. 13 Wallace, 358.

All debts payable in "dollars" generally were, as now, solvable in legal tenders, but an obligation payable in gold coin can be discharged only according to its terms. In authorizing the issuance of bonds for one million of dollars and in the use of the term "money" the Legislature must be supposed to have meant in the act cited that money which constituted the basis of the general
66 business of the country and was a legal tender for the payment of debts. Therefore there was no authority in the act for the issuance of bonds payable in "gold coin," and they were void for want of authority for their issuance. This is a matter of substance involving a departure in a most material feature from the act authorizing bonds to be issued, and rendered them void from the beginning.

This is decisive of this case, and renders unnecessary, if not improper, the consideration of any other question.

Affirmed.

And on the 22 day of April, 1889, the following final decree was rendered in said cause by said supreme court, to wit:

AMOS WOODRUFF, Trustee, *et al.*
v.
STATE OF MISSISSIPPI *et al.* } 6014.

This cause having been submitted on a former day of this term on the record herein from the chancery court of Hinds county, 1st district, and this court having sufficiently examined and considered the same, and being of opinion that there is no error therein, doth order, adjudge, and decree that the decree of said chancery court rendered in this cause on the 31st day of January, 1889, be, and the same is hereby, affirmed, and that the appellants and M. Green and S. S. Calhoon, sureties, do pay the costs of this appeal, to be taxed, &c.

And on the 8 day of May, 1889, the following "motion to amend the decree" was filed in said cause, to wit:

In the Supreme Court, First District, State of Mississippi.

AMOS WOODRUFF, Trustee, *et al.*
v.
THE STATE OF MISSISSIPPI *et al.*

Come the appellants herein, by solicitors, and move the court to amend the decree in this court rendered herein on the — day of April, 1889, by inserting therein the opinion of the court *and* words

and figures following (here copy opinion), so that the record may show affirmatively the grounds upon which the decree was rendered & that the precise question decided herein may appear of record upon writ of error to the Supreme Court of the United States.

CALHOON & GREEN,
Sol's for Appellants.

ATT'Y GENERAL,
NUGENT & McWILLIE,
FRANK JOHNSTON,
J. R. YERGER,
W. G. YERGER,
Contra.

And on the 11 day of June, 1889, the following order on said motion was made and entered herein, to wit:

AMOS WOODRUFF, Trustee, *et al.*
v. } 6014.
STATE OF MISSISSIPPI *et al.*

The motion of appellants to amend the decree herein was withdrawn by Mr. M. Green, one of their attorneys.

67 UNITED STATES OF AMERICA,
State of Mississippi,

To the Honorable Thomas H. Woods, chief justice of the supreme court of the State of Mississippi:

The petitioners, Amos Woodruff, trustee, and The German Bank of Memphis, respectfully show that in a certain cause, wherein petitioners are appellants and The State of Mississippi, W. W. Stone, auditor of public accounts of the State of Mississippi; W. L. Hemingway, treasurer of the State of Mississippi; The Louisville, New Orleans and Texas Railroad Company, The Delta Pine Land Company, N. T. Burroughs, and all persons claiming to own lands within the bounds described in section seven of an act of the Legislature of the State of Mississippi approved March 17th, 1871, creating the Mississippi levee board, district No. 1, and upon which any taxes due said levee board have accrued and are due under said act of 1871, and who are too numerous to be made parties individually and to be served with process herein, appellees, in the supreme court of the State of Mississippi, in a suit in which was pending therein on appeal from the decree of the chancery court of Hinds county for the first district thereof, rendered on the 31st day of January, 1889, against the appellants (and B. Richmond, who does not join in this appeal because deceased and because as to him it does not involve $5,000.00), whereby the bill of appellants to enforce the payment of, to wit, two hundred and fifty-three thousand dollars of principal, and, to wit, $100,000 of interest, on bonds of said levee board owned by appellant Woodruff, and, to wit, eighty-three thou-

sand dollars in principal of said bonds, and, to wit, $40,000 of interest thereon, owned by appellant The German Bank, and, to wit, $1,200.00 of principal and $600 of interest of said bonds was owned by B. Richmond, was dismissed, there was rendered on the 22nd day of April, 1889, a judgment by the supreme court of said State affirming the decree of said chancery court, with costs against petitioners; and petitioners aver that in said suit and in the proceedings on appeal there was drawn in question the obligation of a contract under the Constitution and laws of the United States, the same being executed under a power granted by section 9 of an act of the Legislature of the State of Mississippi approved March 17th, 1871, to said levee board "to borrow money, and to that end to issue bonds of said board to the amount of one million dollars," and the decision was against the validity thereof, in that it was held that in 1871 a contract executed under a law of said State, payable in "dollars in gold coin of the United States," was void when executed under a power granted by such law "to borrow money and to issue bonds therefor to the amount of one million dollars," because "gold coin" at that time "was not the basis of the business of the country," but that United States Treasury notes and national bank notes were the then legal tenders, by which decision the power of the State of Mississippi to make other than gold and silver coin a legal tender was declared, and whereby the obligation of appellants' contract under the Constitution of the United States, article 1, section 10, was impaired and their rights under the laws of the United States in respect to what constitutes legal "money" or "dollars" were violated; and the said supreme court of the State of Mississippi being the highest court of said State in which a judgment can be rendered in said suit and said decree being against the right and claim which was especially set up by said petitioners in said suit, they are aggrieved thereby, and pray a writ of error, with citation but without supersedeas, returnable to the Supreme Court of the United States on the second Monday of October next; and, as in duty bound,
68 they will ever pray.

AMOS WOODRUFF, *Trustee.*
THE GERMAN BANK OF MEMPHIS, TENN.,
By CALHOON & GREEN, *Solicitors.*

Let the writ of error issue as prayed for in the petition.

THOMAS H. WOODS,
Chief Justice, &c.

Endorsed: Filed Sept. 22, 1890. Oliver Clifton, clerk, by C. C. Campbell, D. C.

Writ of Error Bond.

UNITED STATES OF AMERICA:

Supreme Court of the United States.

AMOS WOODRUFF, Trustee; THE GERMAN BANK OF MEMPHIS
versus
THE STATE OF MISSISSIPPI, W. W. STONE, Auditor of Public Accounts of the State of Mississippi; W. L. Hemingway, Treasurer of the State of Mississippi; The Louisville, New Orleans & Texas Railroad Company, The Delta Pine Land Company, N. T. Burroughs.

Know all men by these presents that we, Amos Woodruff, trustee, and the German Bank of Memphis, as principals, and John M. Peters and W. D. Beard, as sureties, are held and firmly bound unto the State of Mississippi, W. W. Stone, auditor of public accounts of the State of Mississippi; W. L. Hemingway, treasurer of the State of Mississippi; The Louisville, New Orleans & Texas Railroad Company, The Delta Pine Land Company, and N. T. Burroughs and W. F. Swan in the penal sum of one thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our successors, executors, administrators, and representatives, jointly and severally, by these presents, as witness our respective hands and seals this 15 day of September, A. D. 1890.

The condition of the foregoing obligation is such that whereas Amos Woodruff, trustee; The German Bank of Memphis, and B. Richmond have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Mississippi on the 22 day of April, 1889, whereby their bill was dismissed with costs: Now, therefore, if the above-named Amos Woodruff, trustee; The German Bank of Memphis, and B. Richmond shall prosecute *its* said writ of error to effect and answer all costs on failure thereof, and shall truly pay and perform the judgment of the Supreme Court of the United States in this cause, then this obligation to be void; otherwise to remain in full force and virtue.

AMOS WOODRUFF, *Trustee*,
By W. D. BEARD, *Att'y-in-Fact.*
GERMAN BANK OF MEMPHIS, TENN.,
By JNO. M. PETERS, *Cas.*
W. D. BEARD (*Surety*).
JNO. M. PETERS (*Surety*).

69 The above bond is hereby approved by me this 22 day of September, 1890.

THOMAS H. WOODS,
Chief Justice, &c.

STATE OF TENNESSEE, }
County of Shelby. }

Personally appeared before me, the undersigned officer, W. D. Beard and Jno. M. Peters, who, being by me first duly sworn, say on oath that each is worth in property subject to execution, over and above his exemptions, the sum of one thousand dollars.

W. D. BEARD.
JNO. M. PETERS.

Sworn to and subscribed before me this 15 day of September, 1890.

HENISDON CARY,
Notary Public. [SEAL]

Endorsed: Filed Sept. 22, 1890. Oliver Clifton, cl'k, by C. C. Campbell, D. C.

STATE OF MISSISSIPPI, SUPREME COURT.

I, Oliver Clifton, clerk of the supreme court of Mississippi, do hereby certify that the above and foregoing pages constitute a full, true, and correct copy of the record and proceedings, judgment, &c., in the said supreme court in said cause No. 6014, Amos Woodruff, trustee, *et al. v.* State of Mississippi *et al.*, together with copies of the petition for writ of error and writ of error bond to Supreme Court of the United States, as the same appear of record and on file in my said office, and that the writ of error, citation, and assignment of errors in the original are hereto attached.

Witness my hand and seal of said supreme court, at office, at Jackson, this September 24th, 1890.

[Seal Supreme Court, State of Mississippi.]

OLIVER CLIFTON, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Fees for making this transcript, $73.50.
Paid by appellants.

OLIVER CLIFTON, *Clerk*,
By C. C. CAMPBELL, *D. C.*

70 *Writ of Error.*

UNITED STATES OF AMERICA:

The President of the United States to the honorable judges of the supreme court of the State of Mississippi, Greeting:

Because in the record and proceedings, as also a decree rendered therein in a suit which is in said court before you, being the highest court of law or equity of said State in which a decision could be had in said suit, between Amos Woodruff, trustee, The German Bank of Memphis, and B. Richmond, and The State of Mississippi; W. W. Stone, auditor of public accounts of the State of Mississippi;

W. L. Hemingway, treasurer of the State of Mississippi; The Louisville, New Orleans & Texas Railroad Company, The Delta & Pine Land Company, N. T. Burroughs, and all persons claiming to own lands within the bounds described in section 7 of an act of the Legislature of the State of Mississippi approved March 17th, 1871, creating the Mississippi levee board of district No. 1, and upon which any taxes due said levee board have accrued and are due under said act of 1871, and who are too numerous to be made parties individually and to be served with process herein, was drawn into question the obligation of a contract under the Constitution and laws of the United States, the same being executed under a power granted by section 9 of an act of the Legislature of the State of Mississippi approved March 17th, 1871, to said levee board to borrow money, and to that end to issue bonds of said board to the amount of one million dollars, and the decision was against the validity thereof, in that it was held that in 1871 a contract payable in dollars in "gold coin of the United States" was void when executed under said power, because, as stated at that time, "gold coin" was not
71 the basis of the business of the country, but that United States Treasury notes and national bank notes were the then legal tenders, by which decision the power of the State of Mississippi to make other than gold and silver coin a legal tender was declared, and the obligation of appellants' contracts under the Constitution of the United States was impaired, and their rights under the laws of the United States in respect to what constituted legal "money" or "dollars" were violated, whereby a manifest error hath happened, to the great damage of the said Amos Woodruff, trustee, & The German Bank, as by complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if the decree therein hath been given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States —.

Seal U. S. Circuit Court, 5th Circuit, Southern District of Mississippi.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 22d day of September, in the year of our Lord 1890.

R. H. WINTER,
Clerk Cir. Court U. S. for So. Dist. Miss.

The foregoing writ of error, without supersedeas, allowed by me this 22d day of September, 1890.

THOMAS H. WOODS,
Chief Justice, &c.

[Endorsed:] Filed Sept. 22, 1890. Oliver Clifton, cl'k, by C. C. Campbell, D. C.

72 UNITED STATES OF AMERICA, }
Southern District of Mississippi. }

The President of the United States to the State of Mississippi, W. W. Stone, auditor of public accounts of the State of Mississippi; W. L. Hemingway, treasurer of the State of Mississippi; The Louisville, New Orleans & Texas Railroad Company, The Delta & Pine Land Company, W. F. Swan, and N. T. Burroughs, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed and lodged in the office of the clerk of the supreme court of Mississippi, wherein Amos Woodruff, trustee, & The German Bank of Memphis are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the decree rendered against the plaintiffs in error, in the said writ of error mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable Thomas H. Woods, chief justice of the State of Mississippi, September 22d, 1890.

THOMAS H. WOODS,
Chief Justice, &c.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, September 22d, 1890.

[Seal U. S. Circuit Court, 5th Circuit, Southern District of Mississippi.]

R. H. WINTER,
Clerk U. S. Cir. Court, So. Dist. Miss.

72*a* [Endorsed:] Filed Sept. 22, 1890. Oliver Clifton, cl'k, by C. C. Campbell, D. C.

We hereby acknowledge service of this writ and waive further execution, Sept. 22d, 1890.

N. T. BURROUGHS &
W. F. SWAN,
By NUGENT & McWILLIE, *Att'ys.*
LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY,
By YERGER & PERCY, *General Counsel.*
THE DELTA & PINE LAND COMPANY,
By FRANK JOHNSTON,
Sol'r of Record for said Company.
T. M. MILLER,
Att'y Gen'l for State of Mississippi,
Auditor & Treasurer thereof.

73 *Assignment of Errors.*

UNITED STATES OF AMERICA:

In the Supreme Court of the United States. October Term, 1890.

AMOS WOODRUFF, Trustee, *et al.*
vs.
THE STATE OF MISSISSIPPI *et al.*

Writ of error to the judges of the supreme court of the State of Mississippi.

The plaintiffs in error come, by attorney, and say that in the proceedings and decree therein of the supreme court of the State of Mississippi in this cause there is error, in this, to wit:

1st. The supreme court of Mississippi erred in deciding that the bonds or contracts executed under the statute of the State of Mississippi entitled "An act to redeem and protect from overflow from the River Mississippi certain bottom lands herein described," approved March 17th, 1871, whereby authority was created and conferred "to borrow money" and to issue bonds payable in
74 "dollars," were void and of no obligation, because made payable in "dollars in gold coin of the United States of America," thereby by such decision impairing the obligation of said contracts.

2nd. Because under the constitution and laws of the United States "gold coin" is and was in 1871 "money" and a legal "dollar," and said decision annuls the said constitution and laws by holding that a contract executed under authority of a State statute to borrow "money" and issue bonds payable in "dollars" was illegal because payable in "dollars in gold coin of the United States of America."

3rd. Because by said decision of said supreme court by such construction of said statute and the said bonds issued thereunder error was committed in holding, in effect, that the State of Mississippi had power to pass a law by which "anything but gold and silver coin" could be "a tender in payment of debts," contrary to section 10, article 1, of the Constitution of the United States.

75 4th. The said supreme court of the State of Mississippi erred in affirming the decree of the chancery court of Hinds county, wherein and by which court the errors first above assigned were likewise committed.

S. S. CALHOON,
MARCELLUS GREEN,
Attorneys for the Plaintiffs in Error.

[Endorsed:] Supreme Court of the United States. Amos Woodruff, trustee, *et al. vs.* The State of Mississippi *et al.* Assignment of

errors. Filed Sept. 22, 1890. Oliver Clifton, cl'k, by C. C. Campbell, D. C. S. S. Calhoon, Marcellus Green, for pl't'ffs in error.

Endorsed on cover: Case No. 14,426. Mississippi supreme court. No. 13. Amos Woodruff, trustee, and The German Bank of Memphis, plaintiffs in error, *vs.* The State of Mississippi, W. W. Stone, auditor of public accounts of the State of Mississippi; W. L. Hemingway, treasurer of the State of Mississippi, *et al.* Filed November 22, 1890.

Office Supreme Court U. S.
FILED.
JAN 10 1893
JAMES H. McKENNEY,
CLERK.

Act of December 2, 1858.

AN ACT to aid in repairing and perfecting the Levee of the Mississippi River in the Counties of DeSoto, Tunica, Coahoma, Bolivar, Washington and Issaquena.

SEC. 1. *Be it enacted by the Legislature of the State of Mississippi*, That there be, and is hereby levied and assessed a uniform tax of ten cents an acre, per annum, on each and every acre of land in this State lying east of the Mississippi River, and north of the southern line of Issaquena county, west of the Yazoo and Tallahatchie Rivers to the confluence of Tallahatchie and Cold Water Rivers, thence north and west of little Tallahatchie to the mouth of McIvers creek, in the county of Panola, thence north with the base of the hills skirting the bottom in the counties of Panola, Tunica, and DeSoto, to Horne Lake; thence west, meandering with said lake, and the pass of the same, to the Mississippi river, except lands held by the State in trust, or otherwise, and school lands now exempt from taxation; which tax shall be continued for the period of five years, and shall be payable annually, on or before the first day of April in each and every year, from the first of April, 1859, to the first of April, 1863, inclusive; *Provided*, That this act shall not be construed so as to embrace any of the Chickasaw School lands, while the same are held in trust by the State. Nor shall it embrace any land known as hill land in the county of DeSoto, but said Chickasaw School land shall be taxed so soon as sold, and said hill land shall be altogether exempt, *Provided further*, That all lands lying in the county of Panola, between the foot of the hills, and the highest known flood line of the Mississippi river shall be exempt from the operations of this act. But no such land shall be exempt, unless the owner, or owners, his, or her agent shall make and file with the Probate Clerk of said county an affidavit setting forth said land by its numbers, and positively stating that the same is above the flood line of the Mississippi river, *Provided, however*, That the said tax proposed to be levied and collected in the said counties

of DeSoto, Tunica, Coahoma, Bolivar, Washington, Issaquena, Yazoo, Sunflower, Tallahatchie, and Panola, shall first be submitted to the legal voters in the district of country proposed to be taxed, on the first Monday in January, 1859, which said election shall be conducted in the same manner, and upon the same notice as other elections, and if a majority of the legal voters, residing in the district of country proposed to be taxed, vote against the said tax, then the same shall not be levied or collected.

* * * * * * *

SEC. 6. *Be it further enacted*, That the tax hereinbefore levied or assessed, shall be a lien on the lands within said district, and should any owner or owners of any lands, or any person interested in the same, fail to pay the taxes hereinbefore levied and assessed, at or before the time when the same may become due, it shall be the duty of the sheriff of the county in which said delinquent land may be situated without further notice, on the second Monday of April in each and every year, after the said tax may become due; to sell at the court house door of his proper county, the land in default, or so much thereof as may be sufficient to pay the tax required and all costs, of conveyance to the purchaser, to the highest bidder for cash and when sold to execute a deed therefor to the purchaser, which deed shall vest in said purchaser a full and complete title in fee simple to the land so sold, and said deed shall be taken and received in any court of justice as vesting a perfect title in the purchaser, and shall be evidence that the title of the owner or owners, as well as the claim of all persons interested therein, is thenceforward vested in the purchaser, and shall be *prima facia* evidence that the land was subject to the tax for the non-payment of which the same was sold, and that all the prerequisites of said sale had been complied with, the said sheriff may continue said sale from day to day, until the whole of said land liable to sale shall be disposed of, and if no person, or persons, shall bid the amount of tax due on any tract of land when offered for sale as aforesaid, such tract of land shall be struck off to the levee treasurer of the general board of commissioners, who shall be entitled to receive a deed therefor, executed to himself and his

successors in office, which deed shall remain on file with the probate clerk of the county in which the land lies for the period of two years from the day of sale, unless the same shall be redeemed as is hereafter provided, saving the rights of all minors and persons *non compos mentis*, who shall have three years to redeem after they come of age, or become of sane mind under the provisions of this act.

SEC. 7. *Be it further enacted*, That the levee treasurer of the general board of commissioners shall have power to sell any land struck off to him at private sale; *Provided*, he shall be able to obtain therefor the amount of the purchase money with all accruing taxes and costs with ten per cent. per annum, upon the whole amount from the date of purchase, the sheriff's deed however for all lands sold for taxes shall be and remain with the probate clerk, and should the owner, or owners, of said lands, their agents or attorneys apply, they or either of them, shall be entitled to the redemption of said land at any time within two years of the day of sale, upon the payment of the purchase money, with all subsequent taxes due thereon, and fifty per cent. per annum interest upon the whole amount; this redemption may be made from the levee treasurer himself, whose receipt shall entitle the person redeeming to have cancelled the sheriff's deed, or the redemption may be made from the probate clerk of the county in which the lands be, and when the sheriff's deed is kept, the said probate clerk being required to receive said money, and pay the same over to the order of the levee treasurer of the general board, or to the person entitled to receive the same, and in default of this, said probate clerk shall be liable on his bond at the suit of the board of levee commissioners, or the party injured, in the same penalty as prescribed for the non-payment of state taxes, and should said lands not be redeemed, or sold as herein provided for the period of two years from the day of purchase, the sheriff's deed shall be made a record in the proper county—vesting permanently without further right of redemption, the title in the levee treasurer of the general board of commissioners and his successors in office, or the person, or persons, who may have purchased the same, or the person to whom he may have transferred

the same by private sale, all lands described in said deed, and when said vestiture shall accrue to said levee treasurer, the land shall become the property of the general levee fund, or other purchaser, and may be disposed of by the board of levee commissioners, as they may by ordinance provide; *Provided however*, That all money paid or received for the redemption of lands purchased by the levee treasurer within the first three years in the counties of Tunica, Coahoma, Bolivar, Washington and Issaquena, shall accrue to said counties respectively, and be paid by the levee treasurer to the person authorized to receive the same. The sheriff for making the deeds and delivering the same to the probate clerk, shall be entitled to receive from the levee treasurer the sum of one dollar for each deed, which sum shall be added and taxed in the costs, and the probate clerk for receiving the money in redemption and paying the same over to the levee treasurer, shall be entitled to five per cent. upon the total amount to be paid by the levee treasurer, and no sheriff's deed shall be objected to for want of form, and when said deed shall embrace the lands of the different claimants, the same shall not be surrendered to other but the probate clerk, shall mark in case of redemption of any portion of said lands, the fact showing the part redeemed and when said deed is recorded, the record shall show the fact, that a portion has been redeemed, and that the title to the same has reverted to the original owner or owners.

* * * * * * *

SEC. 14. *Be it further enacted*, That said board of levee commissioners may issue its scrip payable at such periods as they may stipulate, but not beyond the first day of January, 1863, and in such sums as they may see proper, but not to exceed in the aggregate the sum of half a million of dollars, and the tax hereby assessed and denominated a general fund shall stand pledged for the redemption of said scrip. Said scrip shall not bear an interest greater than that of eight per cent. per annum from its date, and may be sold for money or paid out for work; but in no instance for less than par. Said scrip shall be signed by the president of said board, and shall be countersigned by the secre-

tary of said board, and shall be sealed with the seal of the circuit court of Bolivar county, and the clerk of said circuit court shall keep a faithful record of each and every piece of scrip to which the seal of his office shall be applied; its number, date, amount and when payable, and shall render an account of the same to each meeting of the board of levee commissioners; for such services the said board shall make an allowance to said clerk, payable out of the general levee fund. *Provided*, said allowance shall not exceed the sum of one hundred dollars for any one year; nor shall any scrip be issued for a less sum than one hundred dollars.

Approved December 2, 1858.

Act of February 10, 1860.

"SECTION 7. That all sales of lands hereafter made for the non-payment of taxes due under any law of this State, shall be valid to all intents and purposes—said lands being subject to redemption as provided by law, and that no such sale shall be impeached or questioned in any manner, or for any cause, saving fraud or mistake in the assessment, or sale of the same, or upon the proof that the tax for which the same were sold had been paid prior to such sale, and no suit to set aside any title acquired under such sale, hereafter to be made shall be brought, unless within five years from the date of the sale."

Approved February 10, 1860:

Act of February 27, 1867.

AN ACT to provide for the payment of all debts and liabilities, contracted or assumed, and all scrip or evidence of debt issued by the General Board of Levee Commissioners, organized under an act, approved Dec. 2, 1858, and also, for the payment of all debts and liabilities incurred or assumed by any county for work and labor done, or material furnished prior to the first day of January, 1862, in any county included in the Levee District, created by the act of December 2d, 1858, aforesaid, whether such debts or liabilities incurred or assumed before or after the passage of the act aforesaid.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That there be, and is hereby levied

and assessed a uniform tax of five cents an acre, per annum, on each and every acre of land in the counties of Tunica, Coahoma, Bolivar, Washington and Issaquena, and in such part of DeSoto county as was included in the Levee District, formed by the act approved December 2d, 1858, and a like tax of three cents per acre, is hereby levied and assessed, per annum, on each and every acre of land lying in any other county included in said Levee District, and which was subject to taxation by virtue of the provisions of the act of December 2d, 1858, aforesaid, which tax, so levied and assessed, shall be payable annually on or before the first day of May, in each and every year, from the first day of May, 1868, and shall continue until a sufficient sum is collected, with which to pay all off all the debts and liabilities contracted or assumed, and all the script or evidences of debt issued by the General Board of Levee Commissioners, organized under the act approved December 2d, 1858, aforesaid, and also, to pay off the debts and liabilities incurred or assumed, and all the script or other evidences of debt, issued by any Board of Police or Board of Levee Commissioners, in the counties of Issaquena, Washington, Bolivar, Coahoma or Tunica, for work and labor done, or material furnished, prior to the first day of January, 1862, whether such debt or liability was incurred, or script or other evidence of debt, issued before or after the 2d day of December, 1858.

SEC. 2. *Be it further enacted*, That the tax levied and assessed by the first section of this act, be, and the same is hereby declared to be a tax *in rem* upon the lands included therein, which land shall be subject to sale without further assessment, unless the tax thereon be paid on or before the first day of May, in each and every year, whether the owner have personal estate subject to taxation or not, and such sale shall vest in the purchaser a good and valid title to such lands against any claims of every person whatever, having claim or title thereto.

SEC. 3. *Be it further enacted*, That the tax levied and assessed as aforesaid, shall be collected in the same manner, and the lands which may be sold for the payment thereof, shall be sold on the second Monday in May, in each and every year, in the same manner, and shall be

subject to like redemption, as is provided for the collection or sale of land for taxes in the act of December 2d, 1858, aforesaid, and the amendments thereto, which acts for the collection of the tax herein provided, and for the sale of lands in payment thereof, shall be made to apply and govern the collection of all taxes and sales of lands provided in this law, in all respects, when the same shall not be inconsistent with the provisions of this act.

* * * * * * *

SEC. 7. *Be it further enacted*, That in order to entitle the party to payment of his claim or demand under this act, he shall consent to agree to remit all interest that may have accrued and be due and payable on such claim or demand up to the first day of June, 1867, and shall also agree to surrender such claim or demand to the Board aforesaid to be cancelled and destroyed, and shall accept in lieu thereof bonds to be issued by such Board, payable in one, two, three, four and five years, with interest thereon at the rate of five per centum per annum, from the first day of June, 1867, until the same shall be paid, and the party receiving the same shall supply the stamps required under the laws of the United States, which bonds shall be issued to the party in five equal installments of one-fifth each for the amount of his claim or demand, and shall be made payable out of the monies accruing under the provisions of this act.

* * * * * * *

SEC. 10. *Be it further enacted*, That the Board of Levee Commissioners herein provided for, may sue and be sued in the name by which they are designated in this act, and shall have full power and authority as successors of the General Board of Levee Commissioners, organized under the act of December 2d, 1858, to institute suits by motion or otherwise in their own name against all defaulting Sheriffs, or other officers and their securities on any claim or demand for which such General Board of Levee Commissioners, or the President thereof could have sued, and also for the recovery of any debt or demand for which such General Board of Levee Commissioners or the President thereof could have sued, and they may also compromise and settle in any way deemed advisable such claim or demand as above speci-

fied. They shall also have power to take possession of, sue for and recover any real or personal estate which belonged to the General Board of Levee Commissioners aforesaid whether the title thereto be in the name of such Board of Levee Commissioners or of the President or Treasurer thereof or any other person for the use of such General Board. They may also sell and dispose of any and all such property, real or personal, on such terms and in such manner for cash or on credit as they may deem advisable, receiving in payment therefor, either money or any of the bonds issued under the provisions of this act, and such sale shall vest in the purchaser all the right and title which belonged in law, or equity, to the General Board of Levee Commissioners, organized under the act approved the 2d of December, 1858, to the property so sold or disposed of: *Provided*, That all lands sold under this law by the Sheriff shall be liable to redemption as is provided in the said act approved December 2d, 1858, and the amendments thereto.

* * * * * * *

SEC. 13. *Be it further enacted*, If at a sale for any land for taxes under the provisions of this act, the amount of taxes due thereon be not bid, the same shall be struck off by the Sheriff to this Board, who shall hold the same subject to redemption in the manner before stated, and if not redeemed the same may be sold and disposed of, and the money used and applied in the manner above specified relative to the bonds belonging to the General Board of Levee Commissioners aforesaid; and all the lands acquired by this Board under the provisions of this act, or which belonged to the General Board of Levee Commissioners as aforesaid, shall be exempt from State taxation for levee purposes or otherwise, until the same shall be sold or disposed of by this Board: *Provided, however*, That any party seeking to redeem any land struck off to this Board, under the provisions of this act, shall, before he is permitted to redeem the same, pay all State, county, and levee taxes that would have been due and payable on said land if the same had not been struck off to such Board, but had remained the property of the person offering to redeem; and it shall be the duty of the President of this

Board, on the receipt of any such taxes, forthwith to pay the same to the party entitled thereto.

Approved February 27, 1867.

[Laws of Mississippi, 1866–67, pp. 237–248.]

Act of March 17, 1871.

AN ACT to redeem and protect from overflow from the river Mississippi, certain bottom lands herein described.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That a board of commissioners, to be styled the levee board of the State of Mississippi, District No. 1, to consist of five members, one of whom shall reside in each of the counties of Tunica, Coahoma, Tallahatchie, Panola, and De Soto, shall be elected by the board of supervisors of their respective counties, and they, and their successors in office, shall constitute, and are hereby declared to be a body politic and corporate, by the name and style aforesaid; and by said name may sue and be sued, plead and be impleaded, contract and be contracted with, and have perpetual succession for the purposes hereinafter designated. They may have a common seal, and alter and change the same at pleasure. They may, from time to time, make such by-laws and regulations, and alter and change the same as they may deem proper, not inconsistent with this Act, and the laws of this State, for the purposes of carrying into effect the objects of this Act. They shall elect a treasurer, secretary, and engineer, and from one of their own number a president, and such other officers and agents, and employ such persons as they may deem necessary for the efficient conduct and management of their business. They may do all acts and things not inconsistent with this Act, and the laws of this State, that may be proper to effect the purposes and objects of this Act.

* * * * * * *

SEC. 9. *Be it further enacted*, That for the purposes aforesaid, and to enable them to carry out the purposes of this Act, the said board of levee commissioners shall have power to borrow money, and to that end may is-

sue the bonds of said board to the amount of one million of dollars, in such sums and denominations not less than one hundred dollars each, as the said board may prescribe ; which bonds shall be signed by the president, and countersigned by the treasurer of said board, and be made payable to order or bearer, in not less than two nor more than ten years after the first day of January, 1871, and shall bear a rate of interest not exceeding eight per cent. per annum, for which interest coupons may be attached, payable at such time and place as the board may contract. Said bonds shall be negotiable as promissory notes or bills of exchange, and may be sold and negotiated in any market in or out of the State, on the best terms that can be obtained for the same ; but in no case shall any of them be negotiated or sold at a greater discount than ten per cent. Said board shall fix a place or places for the payment of the principle and interest of said bonds and coupons, and said bonds or coupons shall be receivable after maturity, at par, in payment of any charge or assessment fixed, levied or made by this Act. And the treasurer of said board shall keep a faithful and correct registry, as they are issued, of the number, amount and place of payment of all bonds and coupons that may be issued and sold, or used under this Act, which registry shall also specify the letter and number of the bonds so issued and sold or used. Said treasurer shall also keep a faithful and correct account, showing the date, letter, number, amount, and place of payment of every bond paid by said board, or received in payment, as aforesaid, by said board, and the dates when so paid or received ; and no bond so paid or received in payment by said board, shall again be used or re-issued, but every such bond shall be promptly cancelled by said treasurer. All moneys borrowed by said board, or arising from negotiations or sale of any of said bonds, shall be promptly paid into the treasury of said board, and shall constitute a levee fund, and be used and applied to carry into effect the objects and purposes of this Act : *Provided*, That the tax collector shall make his settlements, under this Act, with the treasurer of the board, under oath ; that he shall set forth in that settlement a full statement of the levee tax of each individual of his

county, specifying the amount paid by each in cash, the amount in bonds, and the date of each such payment; that he shall set forth these facts in one book, to be deposited for public inspection with the treasurer of the board of levee commissioners, and a duplicate thereof to be kept in his own office for public inspection; and that he shall be liable for damages, at the rate of three per cent. per month, for all moneys, which shall have been shown by the said books to have remained in his hands to the credit of the board of levee commissioners for over one month.

SEC. 10. *Be it further enacted*, That the charges and assessments fixed, levied and made as aforesaid, by this Act, shall be, as they are from time to time collected, and they are hereby constituted a special fund and trust to be used by said board; first, in payment of any bonds that may be sold or used as before provided under this Act, and of any money that may be borrowed under its provisions; secondly, for the payment of any other debts or liabilities of said board, and when collected, the same shall be paid into the treasury of said board for the purposes aforesaid; said charges, assessments by this Act fixed, levied and made as aforesaid, on said lands, shall not be subject to repeal, alteration or suspension during the time for which they are fixed, levied and made, as aforesaid, until all the bonds, obligations and liabilities of said board shall be first paid and discharged. And should any of said charges and assessments not be collected, as herein provided, then the holder of any bond or obligation of said board, which may be due and unpaid, may apply to the judge of the circuit court, or of the chancery court, of any district included in the levee district, for a mandamus directed to said board, by which mandamus said board shall be ordered and compelled to proceed to have collected and paid over said charges and assessments, as herein provided, or instead of said mandamus, the said judges may, in their discretion, appoint one or more special commissioners, with authority to collect and pay over said charges and assessments, and for the collection of said charges and assessments; the said commissioners, so appointed, shall have all the powers given by this Act, and shall proceed in the same man-

ner, as by this Act prescribed, to the collectors of said board, for the enforcement and collection of the same; and, such commissioners shall, before they act, give bonds in proper penalties, with good and sufficient securities, to be approved by said judge; and such commissioners shall be allowed for their services, when performed, a sum not exceeding one per cent. on the amounts collected and duly paid over by them.

* * * * * * *

SEC. 24. *Be it further enacted*, That the collection of all State and county taxes, which have been, or may hereafter be, assessed upon any lands, that may be purchased for, or invested in said levee board, as provided for in this Act, shall be, and the same is hereby suspended, so long as such lands are held as assets of said board; said lands shall not, by anything herein be relieved from taxes, but the same shall be charged up and properly accounted for, with interest, by said board, when such land is purchased or redeemed from them.

Approved March 17, 1871.

[Laws of Mississippi, 1871, pp. 37-57.]

FILED.
JAN 23 1891
JAMES. H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1561.

AMOS WOODRUFF ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF MISSISSIPPI ET. AL.

MOTION BY DEFENDANTS IN ERROR.

And now come the defendants in error, The State of Mississippi, The Delta and Pine Land Company, The Louisville, New Orleans and Texas Railroad Company, and N. T. Burroughs, by their solicitors, and move the Court to dismiss this cause for want of jurisdiction, this motion being based upon the following grounds:

1. There is not involved nor presented, nor was there involved nor decided in the State court, any question of a Federal character which gives this Court jurisdiction of the cause.

2. The State court denied to plaintiffs in error no right claimed under the Constitution or laws of the United States.

3. The decision of the State court was solely on a question arising upon the construction of a local statute and not upon a local statute.

4. The ground of decision by the State court is broad enough to sustain the judgment of that court without reference to any other question in the cause.

5. The defenses made to the bill are broad enough to sustain the judgment rendered by the State court without reference to the alleged Federal question.

6. The record shows that no question of a Federal character was considered or decided by the State court, nor was such question necessary to be considered or decided.

Wherefore defendants in error pray that the writ may be dismissed.

T. M. MILLER,
Attorney General of the State of Mississippi.
FRANK JOHNSTON,
Solicitor for the Delta and Pine Land Co.
W. P. HARRIS,
Solicitor for the L., N. O. & T. R. R. Co.
W. L. NUGENT,
Solicitor for N. T. Burroughs.

We waive service of this motion, and now acknowledge service personally, by copy of said motion this, the 19th day of December, 1890.

JACKSON, MISS.

S. S. CALHOON,
MARCELLUS GREEN,
Solicitors of Record for the Plaintiffs in Error.

We have been furnished, in accordance with the rules of court, with copies of the briefs of Frank Johnston, Esq., original brief and brief in reply, and brief of W. P. Harris,

Esq., for the motion, and we agree that this motion may be called and submitted to the Court on the first motion day that the Court will receive said submission.

JACKSON, MISS., *January* 17, 1891.

S. S. CALHOON,
MARCELLUS GREEN,
Att'ys for Pl'ff's in Error.

[Endorsed:] Supreme Court U. S. 1890, October term. No. 1561. Amos Woodruff *et al.*, pl'ffs in error, *vs.* The State of Mississippi *et al.* Motion to dismiss waiver of notice, and consent. Office Supreme Court U. S. Filed Jan. 23, 1891. James H. McKenney, clerk.

Supreme Court of the United States, in October Term, 1890.

AMOS WOODRUFF *et al.*, Plaintiffs in Error,
vs.
THE STATE OF MISSISSIPPI *et al.* } No. 1561.

I hereby adopt the brief and argument filed by Mr. Frank Johnston, solicitor for the Delta and Pine Land Company, as the argument for the State of Mississippi on the motion to dismiss for the want of jurisdiction.

JANUARY 6, 1891.

T. M. MILLER,
Attorney General, Solicitor for the State of Mississippi, W. W. Stone, Auditor, and W. I. Hemingway, Treasurer, &c.

[Endorsed:] Supreme Court U. S. 1890, October term. No. 1561. Amos Woodruff *et al.*, pl'ffs in error, *vs.* The State of Mississippi *et al.* Adoption by Miller of Johnston's brief on motion to dismiss. Office Supreme Court U. S. Filed Jan. 23, 1891. James H. McKenney, clerk.

FILED
MAR 10 1896
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 13.

AMOS WOODRUFF, TRUSTEE, AND THE GERMAN BANK OF MEMPHIS, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MISSISSIPPI, W. W. STONE, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF MISSISSIPPI; W. I. HEMINGWAY, TREASURER OF THE STATE OF MISSISSIPPI, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

MR. MAXWELL'S BRIEF FOR THE PLAINTIFFS IN ERROR.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1895.

No. 13.

AMOS WOODRUFF, TRUSTEE, AND THE GERMAN BANK OF MEMPHIS, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MISSISSIPPI, W. W. STONE, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF MISSISSIPPI; W. I. HEMINGWAY, TREASURER OF THE STATE OF MISSISSIPPI, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

MR. MAXWELL'S BRIEF FOR THE PLAINTIFFS IN ERROR.

The opinion of the supreme court of Mississippi is reported in 66 Miss., 298.

The plaintiffs in error, who were complainants below, filed their bill in the chancery court of Hinds county, Mississippi, to enforce a trust and lien upon certain lands, created in their favor as holders of bonds of the Levee Board

of the State of Mississippi, District No. 1, by an act of the legislature of Mississippi approved March 17, 1871 (Acts of 1871, pp. 38–57), under which said bonds were issued. The bill alleged that the obligation of the bonds and the security provided for their payment by said act of 1871 had been impaired by several subsequent acts of the legislature of Mississippi, which were mentioned in the bill and averred by the bill to be in contravention of the Constitution of the United States. The defendants demurred to the bill upon several grounds; among others, upon the ground that the bonds were invalid because the Levee Board had improperly made them payable in gold coin, and that there was therefore no contract to be impaired; and upon the sole ground that the bonds were on that account void, the demurrers were sustained in the county court and, on appeal, in the supreme court, and the bill was dismissed and the complainants denied any relief.

The writ of error to this Court is upon the grounds that the judgment of the State court (1) in effect sustained the several statutes of Mississippi which impaired the obligation of complainants' contract, and (2) denied to them rights which they claimed under the Constitution and laws of the United States relating to coinage and the currency. In other words, we submit—

1. That the security, and therefore the obligation, of the complainants' bonds issued under the act of the legislature of Mississippi approved March 17, 1871, was impaired by subsequent acts of the legislature of that State, and that the judgment of the supreme court of Mississippi denying all relief to the complainants, on the sole ground that there was no valid contract to be impaired, gave effect to and sustained said subsequent impairing acts.

2. Whether the bonds are payable in gold, and whether, assuming them to be so payable, they are for that reason invalid (having been issued under authority to borrow

"money" and to issue bonds to a certain amount in "dollars)," depends upon the construction of the Constitution and laws of the United States relating to coinage and the currency; and the decision of the supreme court of Mississippi holding that the bonds were invalid, upon the sole ground that they were held to be payable in gold coin, was the denial of the right claimed by the complainants to a valid contract under the Constitution and laws of the United States.

THE PROVISIONS OF THE ACT OF 1871 UNDER WHICH THE BONDS WERE ISSUED.

The bonds were issued under an act of the legislature of Mississippi approved March 17, 1871, entitled "An act to redeem and protect from overflow from the River Mississippi certain bottom lands herein described" (Acts of 1871, p. 37, Rec. 8–15), the essential provisions of which are as follows:

Section 1 created a body corporate, to be known as the Levee Board of the State of Mississippi, District No. 1, to consist of five members, to reside one each in the counties of Tunica, Coahoma, Tallahatchie, Panola, and De Soto, to be elected by the board of supervisors of their respective counties, with power to sue and be sued, to have a corporate seal and perpetual succession, to make such by-laws and regulations and alter and change the same as they might deem proper, and to do all acts and things, not inconsistent with the act and the laws of the State, that might be proper to effect the purposes and objects of the act.

Section 3 gave the board power and required them "to construct, repair, and maintain a levee on or near the east bank of the Mississippi river, extending from the base of the hills on or next said bank of said river in the State of Tennessee * * * to the southern boundary of Coahoma county, * * * in order effectually to protect and reclaim the lands in the district hereinafter designated from overflow by the waters of the Mississippi river," etc.

Section 7 declares that all the bottom lands, designating

the boundaries, in the counties of De Soto, Tunica, Coahoma, Tallahatchie and Pontotoc, and six townships in the county of Sunflower, "shall be, and constitute, as aforesaid, Mississippi levee district No. 1, which it is the purpose of this act to protect and reclaim as aforesaid, by the agency of said board of commissioners, and the lands embraced and included in said levee district, shall be and are hereby declared to be and are made chargeable and liable, as hereinafter declared, for all the costs, outlays, charges and expenses to be incurred or made for the levees, works and improvements provided for and contemplated by this act or in maintaining the same."

"SEC. 8. That for the purpose of building, repairing, constructing and maintaining the levees and works aforesaid, and for carrying into effect the object and purposes of this act, a uniform charge and assessment of two per cent. per annum, on the value of every acre of unimproved and improved land, and cultivated lands in said levee district, is hereby fixed, levied and made, which shall continue and be collected in each and every year for the period of twelve successive years from the date of this act, and shall be due and payable annually, on or before the first day of September in each year for said period, and the valuation of every acre of unimproved land so taxed is hereby fixed for the purposes of this act at five dollars, except Sunflower and Tallahatchie counties, which shall be three dollars, and every acre of improved and cultivated land at thirty dollars, except Sunflower and Tallahatchie counties, which shall be twenty dollars, and every acre of land improved and fenced, which shall not be cultivated at fifteen dollars, except Sunflower and Tallahatchie counties, which shall be ten dollars per acre: *Provided*, That as soon as such unimproved lands shall have been improved, and said uncultivated lands shall have been put in cultivation in any year, the same shall be valued for the purposes of this act at thirty dollars per acre. The intention of this act in its exercise of the taxing power, being that every acre of land cultivated in any year during the period of taxation, shall be valued at the maximum assessment and made liable to taxation accordingly; and in all assessments made, the lands described as cultivated shall be held to be such, when a crop shall have been pitched thereon, or the same shall have been used in anywise for production, or for any

other use in the year, for which the assessment shall be made."

"SEC. 9. That for the purposes aforesaid, and to enable them to carry out the purposes of this act, the said board of levee commissioners shall have power to borrow money, and to that end may issue the bonds of said board to the amount of one million of dollars, in such sums and denomination not less than one hundred dollars each, as the said board may prescribe; which bonds shall be signed by the president and countersigned by the treasurer of said board, and be made payable to order or bearer, in not less than two nor more than ten years after the first of January, 1871, and shall bear a rate of interest not exceeding eight per cent. per annum, for which interest coupons may be attached, payable at such time and place as the board may contract. Said bonds shall be negotiable as promissory notes or bills of exchange, and may be sold and negotiated in any market in or out of the State, on the best terms that can be obtained for the same; but in no case shall any of them be negotiated or sold at a greater discount than ten per cent. Said board shall fix a place or places for the payment of the principal and interest of said bonds and coupons, and said bonds or coupons shall be receivable after maturity, at par, in payment of any charge or assessment fixed, levied or made by this act. * * * All moneys borrowed by said board, or arising from negotiations or sale of any of said bonds, shall be promptly paid into the treasury of said board, and shall constitute a levee fund, and be used and applied to carry into effect the objects and purposes of this act." * * *

"SEC. 10. That the charges and assessments fixed, levied and made as aforesaid, by this act, shall be, as they are from time to time collected, and they are hereby constituted a special fund and trust to be used by said board; first, in payment of any bonds that may be sold or used as before provided under this act, and of any money that may be borrowed under its provisions; secondly, for the payment of any other debts or liabilities of said board, and when collected, the same shall be paid into the treasury of said board for the purposes aforesaid; said charges, assessments by this act fixed, levied and made as aforesaid, on said lands, shall not be subject to repeal, alteration or suspension during the time for which they are fixed, levied and made, as aforesaid, until all the bonds, obligations and liabilities of said

board shall be first paid and discharged. And should any of said charges and assessments not be collected, as herein provided, then the holder of any bond or obligation of said board, which may be due and unpaid, may apply to the judge of the circuit court, or of the chancery court, of any district included in the levee district, for a mandamus directed to said board, by which mandamus said board shall be ordered and compelled to proceed to have collected and paid over said charges and assessments, as herein provided, or instead of said mandamus, the said judges, may in their discretion, appoint one or more special commissioners, with authority to collect and pay over said charges and assessments, and for the collection of said charges and assessments, the said commissioners, so appointed, shall have all the powers given by this act, and shall proceed in the same manner, as by this act prescribed, to the collectors of said board, for the enforcement and collection of the same." * * *

"SEC. 11. That the charges and assessments fixed, levied and made as aforesaid by this act, shall be collected by the tax-collector appointed by the president and confirmed by the board, who shall give bonds," etc.

"SEC. 12. That in case the owner or owners of any land in said district, and any person interested therein, shall fail to pay the said charges and assessments by this act levied thereon, at or before the time when the same shall become due, as aforesaid, it shall be the duty of the tax-collector to proceed without any further assessment, demands or notice, on the second Monday in January in each and every year, after such charges and assessments become due, as aforesaid, to sell at public auction, to the highest bidder for cash, at the door of the court-house of the county, in which the land is situated, the said lands or so much thereof as may be necessary to pay the said charges and assessments due thereon, with fifteen per centum damages thereon, and all costs of conveyance to the purchaser, and shall execute to the purchaser at such sale, a proper deed, duly acknowledged, etc., * * * and if no person or persons shall bid for any land, the amount due and payable thereon for such charges and assessments, damages and costs, when the same is offered for sale, as aforesaid, such land shall be struck off for said amounts to the treasurer of said board of commissioners, and such tax-collector shall execute a deed convey-

ing the same to said treasurer, and his successors in office, in fee-simple, for the use of said board." * * *

"SEC. 13. That the treasurer of said board of commissioners and his successors in office, shall have the power to sell, at private sale, any of said lands conveyed to him as aforesaid: Provided, he can obtain therefor, in cash, the amount of the purchase-money, with accruing taxes, charges, assessments and costs, with ten per centum per annum thereon, from dates when due, until paid; * * * and the owner or owners of any lands so sold by such collector, * * * may * * * apply to said treasurer at any time within two years from the date of such collector's sale * * * and redeem such land upon payment of the purchase-money and all subsequent taxes, charges, and assessments due and unpaid thereon, with interest at the rate of twenty-five per centum thereon, from the time when due, until the date of redemption;" * * *

"SEC. 20. * * * said board may, and it shall be its duty, to invest and keep invested in public securities of the United States until required to pay any of the bonds or liabilities of said board [and] all such part of the funds and moneys of said board as may not at any time be required for present use in paying the matured debts and liabilities of said board, or in carrying into effect the purposes of this act."

"SEC. 23. That if the charges and assessments herein fixed, levied and made, shall be adjudged and held inoperation [inoperative], then the said board of levee commissioners shall have power and they are hereby required to proceed immediately through five commissioners to be appointed by said board for that purpose, and have just and legal rates, assessments, charges or taxes levied and made on all lands in said levee district, or on either, as may be lawful, sufficient in amount, when collected year by year, as contemplated by this act, to pay all such bonds, loans, debts and liabilities, and enable said board of commissioners to carry into effect the provisions of this act, one of whom shall reside in each of the aforesaid counties."

"SEC. 24. That the collection of all State and county taxes, which have been, or may hereafter be, assessed upon any lands, that may be purchased for, or invested in said levee board, as provided for in this act, shall be, and the same is hereby suspended, so long as such lands are held as assets

of said board; said lands shall not, by anything herein be relieved from taxes, but the same shall be charged up and properly accounted for, with interest, by said board, when such land is purchased or redeemed from them."

"SEC. 28. That every tax-payer of each county within the levee district herein defined, shall be and is hereby required to file with the levee tax collector of said county, a statement under oath, setting forth the number of acres of land which he owns or represents, and on which he is chargeable under this act, the number of acres cleared and uncleared, the number under fence and the number under cultivation; that this statement shall be filed," etc.

"SEC. 29. That all taxes levied and assessed under this act, be and the same are declared to be a tax *in rem*, upon the lands embraced therein, which lands shall be subject to sale without further assessment, on or before the day of sale of the same, in each and every year, whether the owner has personal estate subject to taxation or not, and such sale shall vest in the purchaser a good and valued [valid] title to the same lands, against the claims of every person whatever, having claims or title thereto, subject to redemption as hereinbefore provided."

THE OBLIGATION AND SECURITY OF THE BONDS WERE IMPAIRED BY THE SUBSEQUENT ACTS OF THE LEGISLATURE OF MISSISSIPPI.

Under the decisions of this Court in *Von Hoffman vs. City of Quincy*, 4 Wall., 535; *McGee vs. Mathis*, 4 Wall., 143; *Louisiana vs. Pilsbury*, 105 U. S., 278, and of the supreme court of Mississippi in *Gibbs vs. Green*, 54 Miss., 592, 609, it cannot be doubted that the acts of the legislature of Mississippi passed subsequent to the act of March 17, 1871, and complained of in the bill, impaired the security, and therefore the obligation, of the bonds issued under the act of 1871, for it is settled by those cases that the power of taxation given by statute as security for municipal bonds is a contract within the meaning of the Constitution of the United States, and cannot be withdrawn until the bonds are

satisfied, and that a subsequent statute attempting to repeal or restrict the power of taxation so previously given is in contravention of the Federal Constitution.

The act of March 1, 1875 (Acts of 1875, p. 11) (Rec., pp. 19, 20), commonly known as the abatement act, declared that "all State, State teachers' funds, and county taxes 'suspended' for any years prior to fiscal year 1874 upon lands which are held or claimed by any one of the three levee boards under sales or forfeitures for taxes are hereby abated, and said lands released from any further charge or accountability therefor" (sec. 2); "that the levee taxes and charges on any and all lands now claimed as forfeited to or purchased for delinquent taxes * * * by the levee board of district number one, or on lands in which either of said levee boards claim liens for taxes, are hereby abated for all fiscal years of said levee boards ended prior to January 1st, 1874, * * * and said lands are hereby released from any further charge or accountability therefor" (sec. 3); and "that all lands hereafter [heretofore] held or claimed for taxes, either by the State or any one of the said three levee boards, are hereby declared to be liable for the taxes of 1874 alone (January 1st to January 1st)" * * * (sec. 5).

Section 21 repealed all laws governing the transactions of levee boards in conflict with the provisions and purposes of the act.

The bill avers that a large amount of the land held by levee district No. 1 was made subject to the operation of this abatement act and sold under the same (Rec., p. 38), and that "the said auditor of public accounts has been from time to time conveying the lands so sold to said district No. 1 without collecting any of the taxes due the said district on such lands prior to the year 1874, claiming and pretending that the taxes due prior to the fiscal year 1874 were by said act of the legislature approved March 1, 1875, relinquished and abated." (Rec., p. 43.)

The act was a flagrant violation of the pledge made to

the bondholders by section 8 of the act of 1871 of "a uniform charge and assessment of two per cent. per annum," "which shall continue and be collected in each and every year for the period of twelve successive years from the date of this act," and of the provision of section 10 of the act of 1871, that "said charges and assessments by this act fixed, levied and made as aforesaid, on said lands, shall not be subject to repeal, alteration or suspension during the time for which they are fixed, levied and made, as aforesaid, until all the bonds, obligations and liabilities of said board shall be first paid and discharged."

By the act of April 11, 1876, entitled "An act to abolish the levee board of district No. 1 and to pay the debts of said board" (Acts of 1876, p. 174; Rec., pp. 22, 23), the auditor of public accounts and the secretary of state were appointed the levee board of district No. 1 *ex officio* in lieu of the district officers. Section 5 provided that "the assessment of the lands of said levee district made for the year 1875 shall remain as the assessment thereof until otherwise ordered by law." This was to prevent the operation of section 8 of the act of 1871, which declared "that as soon as unimproved lands shall have been improved and uncultivated lands shall have been put in cultivation in any year, the same shall be valued for the purposes of this act at thirty dollars per acre. The intention of this act in its exercise of the taxing power being that every acre of land cultivated in any year during the period of taxation shall be valued at the maximum assessment and made liable to taxation accordingly; and in all assessments made the lands described as cultivated shall be held to be such, when a crop shall have been pitched thereon or the same shall have been used in anywise for production, or for any other use in the year for which the assessment shall be made."

Section 5 of this act of April 11, 1876, was repealed by the act of January 25, 1882 (Acts of 1882, p. 694, Rec., p. 25), on the ground, as recited in the repealing act, that it had been

declared unconstitutional by the Federal court in Mississippi; but the bill avers that it was acted on prior to its repeal; and that "for several years the tax due district No. 1 was collected on the assessment of 1875, which was much less than the assessment required by the said act of 1871, * * * and thereby the said tax as levied by the said act of March 17, 1871, was greatly reduced, to the great damage and injury of the holders of the bonds of district No. 1, issued under said act of March 17, 1871." (Rec., p. 44.)

Section 7 of said act of April 11, 1876, provided "that the sheriffs shall receive in payment of said levee taxes due bonds and coupons of said levee district except two per cent. in cash," instead of all cash as provided by the act of 1871.

Section 9 provided that any money in the hands of the treasurer to the credit of the levee board of district No. 1 should be appropriated first "in the payment of debts not secured by bonds, and the surplus, if any, in buying bonds and coupons of said levee district No. 1 to the best advantage, after inviting proposals to bid therefor by publication, the funds on hand to be appropriated to the lowest bid," in violation of section 10 of the act of 1871, which made the funds of the board "a special fund and trust to be used by said board, first, in payment of any bonds, * * * and secondly for the payment of any other debts or liabilities of said board."

The act of April 11, 1876, entitled "An act to relieve the lower part of Coahoma county and De Soto and Tallahatchie counties from levee tax of district No. 1" (Acts of 1876, p. 350; Rec., pp. 25, 26), provided that "all the lands in the lower part of Coahoma county and in De Soto and Tallahatchie counties which are not protected from overflow by reason of the failure of levee board in district No. 1 to complete its levee in Coahoma, De Soto, and Tallahatchie counties be, and the same are hereby, exempted from all tax

imposed by the act creating said board, approved March 17, 1871, or any act amendatory thereof," in violation of sections 7, 8, and 10 of the act of 1871, which included the foregoing lands in the taxing district and imposed as security for the bonds "a uniform tax of two per cent. per annum on the value of *every acre* of unimproved and improved land and cultivated lands in said levee district, which shall continue and be collected in each and every year for the period of twelve successive years from the date of this act," without right of "repeal, alteration or suspension." The bill avers that "such lands so pretended to be relieved have not paid the taxes imposed by said act of March 17, 1871, and that the auditor of State has not required the tax-collectors to collect taxes thereon, but has permitted them to go without paying any of the taxes due district No. 1." The fact that the levee board had failed to construct levees was no ground for repealing the lien as against the bondholders who had lent their money to the board for that purpose on the faith of the lien.

Finally, by the act of March 5, 1884, entitled "An act to repeal an act to redeem and protect from overflow from the River Mississippi certain bottom lands herein described, approved March 17, 1871, and for other purposes" (Acts of 1884, p. 184; Rec., p. 27), the act of March 17, 1871, was repealed, and the levee district created by said act was "forever abolished and dissolved, without power of revivor or succession of any kind or in any form whatsoever," and the act of April 11, 1876, substituting the State board for the levee board, was also repealed, and "the duties, powers and obligations imposed and conferred upon the auditor of public accounts and the treasurer of the State, as constituting, *ex officio*, said levee board of district No. 1, be, and the same are, hereby revoked, rescinded and abrogated, and said levee board of district No. 1, as so constituted, is hereby forever abolished and dissolved, without power of revivor or succession of any kind whatsoever."

It is not necessary to repeat here the allegations of the bill which show how the defendants, The Delta Pine Land Company and The Louisville, New Orleans and Texas Railroad Company, acquired nearly a million acres of these lands for a few cents per acre, which they did not pay in cash, and without paying any of the taxes due to district No. 1; nor is it necessary to recite the various acts of the legislature mentioned in the bill, passed subsequent to the act of March 17, 1871, whereby the lands which had been pledged by that act, as first security for the bonds to be issued thereunder, were attempted to be subjected to a prior lien in favor of other bonds. Enough only has been stated to show such impairment of the security and obligation of the bonds by subsequent legislation of the State as to give this Court jurisdiction.

The impairing acts complained of are thus summarized by the bill (Rec., p. 44):

"Complainants state and charge that the said acts of the legislature of the State of Mississippi herein set forth, whereby the taxes due to said levee board of district No. 1 were abated & by which the purchase price was changed from cash to bonds, & whereby the collection of the said tax was changed from the assessment provided by the act of 1871 to that of said act of 1875, and whereby some of the lands upon which said tax was imposed were relieved therefrom, and whereby the claims against the liquidating levee board were relieved of the bar of the statute of limitations, and whereby the obligation of the contracts of said levee board of district No. 1, as evidenced by said bonds issued under said act of March 17, 1871, was impaired (each of which statutes said auditor has been and is now executing), are void, because the same impair the obligation of said contracts and are inhibited by the Constitution of the United States."

made payable, the levee board had authority in its discretion to make them payable in gold.

Judson vs. City of Bessemer, 87 Ala., 240, was a bill filed by the plaintiffs to enjoin the city of Bessemer from issuing certain municipal bonds upon the ground, among others, that the municipal officers had made them payable in gold. The statute conferred authority on the Mayor and Aldermen in general terms to issue bonds of the city to an amount not exceeding $30,000, payable in fifty years from their issuance, with coupons attached, bearing interest at a rate not exceeding 8 per cent. per annum, and payable annually to bearer, at some place designated by the board. On the point in question the court said:

"The remaining contention is that the bonds are invalid because of a want of authority to make them payable 'in gold coin of the United States of America, of the present standard weight and fineness,' as provided by the ordinance. The general rule is that corporations upon whom is conferred power to give securities may exercise such power in the same mode and manner as natural persons may under similar circumstances, there being no legislative restriction nor specification of a particular mode (*Trustees vs. Moody*, 62 Ala., 389.) The charter, while specifying the amount and denominations of the bonds to be issued, the time in which they may be made payable, and the rate of interest, is silent as to the kind of currency in which they shall be payable. The purpose is to authorize the issue of bonds, which, by usage and judicial adjudications, are negotiable securities. The limitation is that they shall possess the elements of negotiability. There being different kinds of currency, the legislative intent is to leave this matter to the discretion and judgment of the municipal authorities—a matter of contract. The evident purpose of making the bonds payable in gold coin of the present standard weight and fineness is to give them a fixed and stable value on their face, not subject to be affected by fluctuations in the value of the various kinds of circulating medium or to future appreciation or depreciation of the present value of gold coin. Express and general power to issue negotiable bonds, in the

absence of legislative restriction, carries the implied or incidental power to make them payable generally—that is, in currency, which is constitutionally a legal tender or payable in a particular coin, which constitutes the legal and commercial standard by which the value of other kinds of currency is measured. Under such express power the city of Bessemer has an authority to agree that the bonds shall be payable as provided by the ordinance."

To the same effect is *Farson, Leach & Co. vs. Board of Comm'rs of Sinking Fund of City of Louisville* (June 15, 1895), 16 Ky. Law Rep., 856, 30 S. W. Rep., 17, where it was held that municipal bonds issued by the city of Louisville were not void because the principal and interest were made payable in gold coin of the United States, although the act authorizing their issue and sale was silent as to the medium in which they were to be made payable. The language of the statute of Kentucky involved in the decision (Acts of 1889–'90, c. 1735, p. 1307) is substantially like that of the Mississippi act of 1871.

4. Because by section 3 of the act of March 5, 1884 (Acts of 1884, p. 184; Rec., pp. 27, 28), the State has recognized the bonds as valid, declaring "that the auditor of public accounts as State auditor may receive the bonds and coupons of said former levee board of the State of Mississippi, district No. 1, in the redemption or purchase of lands heretofore sold for the non-payment of district No. 1 levee taxes, to the extent that said levee taxes are now due and unpaid, for all years preceding up to and including the year March 17, 1883."

5. Even if the bonds are invalid, there is still a debt due to the bondholders for the money which they lent to the levee board, that is entitled to the benefit of the security provided by the act of March 17, 1871.

THE FAILURE OF THE SUPREME COURT OF MISSISSIPPI TO EXPRESSLY NOTICE OR SPECIFICALLY PASS UPON THE VALIDITY OF THE SUBSEQUENT ACTS OF THE LEGISLATURE OF THAT STATE, BY WHICH THE OBLIGATION AND SECURITY OF THE BONDS WAS ATTEMPTED TO BE IMPAIRED, DOES NOT DEFEAT THE JURISDICTION OF THIS COURT. THE DISMISSAL OF THE BILL BY THE SUPREME COURT OF MISSISSIPPI AND THE DENIAL OF ALL RELIEF TO THE COMPLAINANTS, UPON THE SOLE GROUND THAT THERE WAS NO CONTRACT TO BE IMPAIRED, NECESSARILY GAVE EFFECT TO THE LEGISLATION COMPLAINED OF.

In *Chapman vs. Goodnow*, 123 U. S., 540, 548, Chief Justice Waite said:

"We are aware that a right or immunity set up or claimed under the Constitution or laws of the United States may be denied as well by evading a direct decision thereon as by positive action. If a Federal question is fairly presented by the record and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right within the meaning of sec. 709 of the Revised Statutes as if it had been specifically referred to and the right directly refused."

In *Chicago Life Ins. Co. vs. Needles*, 113 U. S., 574, 579, Mr. Justice Harlan said:

"The supreme court of Illinois did not, in terms, pass upon the claim distinctly made there, as in the court of original jurisdiction, that the statutes in question were in derogation of rights and privileges secured to appellant by the Constitution of the United States, but the final judgment necessarily involved an adjudication of that claim. * * * This Court, therefore, has jurisdiction to inquire whether any right or privilege protected by the Constitution of the United States has been withheld or denied by the judgment below."

Louisiana vs. Pilsbury, 105 U. S., 278 (1881); 31 La. Ann., 1 (1879), was a suit by the holder of certain bonds of the city of New Orleans, issued under an act of the General Assembly of the State passed in 1852, against the mayor and administrators of the city, to compel them by mandamus to levy and collect the tax which had been pledged by the act of 1852 for the payment of the interest on the bonds, and by injunction to prevent the mayor and administrators from levying any tax on the real estate within the city limits, without first having provided for the debt evidenced by the bonds (31 La. Ann., 6). The General Assembly of the State had passed an act March 6, 1876, prohibiting the levying of the tax stipulated in the act of 1852 to pay the interest on the bonds, and taking away from the bondholders the means of enforcing payment in existence when the debt was contracted. The petition alleged that the act of 1876 was void because it impaired the obligation of the bondholders' contract, while the answers of the defendants relied upon that act as a bar to the suit.

The supreme court of Louisiana declined to pass upon the question of the validity of the act of 1876, and dismissed the suit upon the sole ground that the act of 1852, under which the bonds were issued, was itself invalid because in contravention of the constitution of the State, and that there was therefore no such contractual obligation as the plaintiff alleged to be impaired by the act of 1876; but this Court held that it had jurisdiction to review the judgment of the supreme court of Louisiana, and reversed that judgment because, in the opinion of this Court, the act of 1852 did not contravene the State constitution, but was valid.

The following passage from the opinion of the supreme court of Louisiana leaves no doubt as to the correctness of our statement that that court declined to pass upon the validity of the act of 1876:

"We do not find it necessary to pass upon this act because the views which we have already expressed [that the

act of 1852 authorizing the bonds was unconstitutional] suffice to dispose of this case, and we prefer to reserve any expression of opinion as to the validity of the act, in whole or in part, until the question shall be presented to us in such shape and between such parties as will give us jurisdiction. Without reference to this act, the relator is not entitled to the relief which he seeks, and that is the only matter to be determined on this appeal." (31 La. Ann., 22.)

WHETHER THE BONDS ARE PAYABLE IN GOLD, AND WHETHER, ASSUMING THEM TO BE SO PAYABLE, THEY ARE ON THAT ACCOUNT INVALID (HAVING BEEN ISSUED UNDER AUTHORITY TO BORROW "MONEY" AND TO ISSUE BONDS TO A GIVEN AMOUNT IN "DOLLARS") DEPENDS UPON THE CONSTRUCTON OF THE CONSTITUTION AND LAWS OF THE UNITED STATES RELATING TO COINAGE AND THE CURRENCY; AND THE DECISION OF THE SUPREME COURT OF MISSISSIPPI HOLDING, UPON A COMPARISON OF THE FEDERAL CONSTITUTION AND LAWS WITH THE AUTHORITY GRANTED BY THE STATE LAW OF 1871, THAT THE BONDS, BECAUSE PAYABLE IN COIN, DO NOT CREATE A CONTRACT, IS THEREFORE THE DENIAL OF "A TITLE, RIGHT, PRIVILEGE, OR IMMUNITY CLAIMED (BY THE PLAINTIFFS IN ERROR) UNDER THE CONSTITUTION OR * * * STATUTE OF * * * OR AUTHORITY EXERCISED UNDER THE UNITED STATES" WITHIN THE MEANING OF THE REVISED STATUTES, SECTION 709.

Trebilcock vs. Wilson, 12 Wall., 687, was a suit in a State court (Iowa) to cancel a mortgage executed prior to the legal-tender acts to secure a debt payable in coin, upon the allegation that the plaintiff mortgagor had tendered United States notes to the mortgagee. There was a judgment for the plaintiff in the State court. This Court took jurisdiction on a writ of error sued out by the defendant, overruling *Roosevelt vs. Meyer*, 1 Wall., 512, and reversed the judgment of the State court. Mr. Justice Field, delivering the opinion of the Court, said on the question of jurisdiction (p. 692):

"The State court in holding the tender legal and sufficient sustained the validity and constitutionality of the act of Congress declaring the notes a legal tender. Its decision was therefore in favor of and not against the right claimed by the plaintiffs under the act of Congress, and hence it is contended that the appellate jurisdiction of this Court does not arise under the 25th section of the judiciary act of 1789. * * * That section provides for the review of the final judgments and decrees of the highest court of a State in which decisions could be had in three classes of cases. * * *

"Third. Where is drawn in question the construction of any clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party under such clause of the Constitution, treaty, statute, or commission.

"Under this last clause the appellate jurisdiction of this Court in the case of *Roosevelt vs. Meyer* might have been sustained. The plaintiff in error in that case claimed the right to have the bond of the defendant paid in gold or silver coin under the Constitution, upon a proper construction of that clause which authorizes Congress to coin money and regulate the value thereof and of foreign coin, and of those articles of the amendments which protect a person from deprivation of his property without due process of law, and declare that the enumeration of certain rights in the Constitution shall not be construed as a denial or disparagement of others retained by the people, and reserve to the States or the people the powers not delegated to the United States or prohibited to the States."

"The decision of the court below being against the right of the plaintiff in error claimed under the clauses of the Constitution the construction of which was thus drawn in question, he was entitled to have the decision brought before this Court for re-examination.

"In the present case, as the defendant claimed a similar right upon a construction of the same and other clauses of the Constitution and a like adverse decision of the court below was made, he is equally entitled to ask for a re-examination of the decision."

The Court sustained its jurisdiction upon the further ground that "the defendant also claimed the right to demand coin in payment of the note of the plaintiff by the acts of Congress regulating the gold and silver coins of the United States and making them a legal tender in payment of all sums according to their nominal or declared values, contending that the act of 1862, making notes of the United States a legal tender for debts, did not apply to the contract in suit," and that "this right having been denied by an adverse decision, he was clearly in a condition to invoke the appellate jurisdiction of this Court for a review of the decision."

The learned Justice added :

"Nor is the appellate jurisdiction of this Court in this case affected by the change in the language of the third clause of the twenty-fifth section of the judiciary act of 1789 by the second section of the amendatory judiciary act of February 5, 1867."

So *Bronson vs. Rodes*, 7 Wall., 229, was a bill in a State court for the cancellation of a mortgage made in 1851 to secure a debt payable in gold and silver, the plaintiff averring a tender, followed by a deposit in court, of the amount of the mortgage in United States notes. The State court rendered judgment for the plaintiff. This Court reversed that judgment on the ground that the express contract to pay coin dollars, made prior to the passage of the legal-tender acts, could only be satisfied by the payment of coin ; that such a contract was not a "debt" which could be satisfied by the tender of United States notes on a proper construction of the legal-tender acts.

Butler vs. Horwitz, 7 Wall., 258, was an action in the State court to recover rent under a lease made in 1791, payable in coin. The State court gave judgment for the currency value of the coin. This Court assumed jurisdiction upon a writ of error sued out by the defendant below, and re-

versed the judgment of the State court on the ground that the judgment should have been entered payable in coin, instead of for the currency value of coin.

"Money" and "dollars," the terms used by the Mississippi act, have signification only as defined by the Constitution and laws of the United States, and it is for this Court therefore to determine their meaning and to protect the contractual rights of those who hold promises to pay "dollars" and "money" when the validity and binding force of such promises are denied by state courts on the sole ground that "money" and "dollars" do not mean and include what the Federal law declares them to mean.

It is respectfully submitted that the judgment should be reversed.

LAWRENCE MAXWELL, JR.,
Of Counsel.

CALDERON CARLISLE,
MARCELLUS GREEN,
S. S. CALHOUN,
Of Counsel.

Supreme Court, U. S.
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Supreme Court of the United States.

OCTOBER TERM, 1895.

AMOS WOODRUFF, Trustee et al.,
Plaintiffs in Error,

vs.

THE STATE OF MISSISSIPPI et al.,
Defendants, in Error.

No. 13.

In Error to the Supreme Court of the State of Mississippi.

Brief for the Defendants in Error in Reply to the Brief of Mr. Maxwell for the Plaintiffs in Error.

FRANK JOHNSTON,
Of Counsel for the Delta and Pine Land Company.

J. HUBLEY ASHTON,
WM. G. YERGER,
Of Counsel for the Louisville, New Orleans and Texas Railroad Company.

McGILL & WALLACE, LAW PRINTERS, Washington, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 13.

AMOS WOODRUFF, TRUSTEE, *et al.*, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MISSISSIPPI, *et al.*

Brief for the Defendants in Error in Reply to Mr. Maxwell's Brief for the Plaintiffs in Error.

Before replying to the two propositions contained in Mr. Maxwell's brief, filed at the oral argument of the case, we desire to call the attention of the Court to the title of the defendants in error to the lands in controversy, as disclosed by the statements of the bill, and as shown by the statutes of Mississippi referred to and stated in the bill, and the Acts of 1858, 1867 and 1871, printed and filed in the case.

The *Delta and Pine Land Company*, the *Louisville, New Orleans, and Texas Railroad Company, and Mr. N. T. Burroughs*, are *bona fide* purchasers of these lands

under titles derived from the Liquidating Levee Commissioners, at the sales of the lands made under the decree in the case of *Green* v. *Gibbs* (54 Miss., 610).

The lands had been sold at tax sales under the Levee Acts of December 2, 1858, and the Liquidating Levee Act of February 27, 1867, and purchased by the Liquidating Levee Commissioners, who held them under the terms of the Act of 1867, as *a trust fund* for the creditors of the Liquidating Levee Board created by that act Many of those tax sales were made in 1868, 1869, and 1870, prior to the Act of 1871 creating the Board of Levee Commissioners of District No. 1, and some of the tax sales were made in later years. By the express terms of the thirteenth section of the Act of February 27, 1867, all of the lands held by the Liquidating Levee Commissioners were "*exempt from State taxation for levee purposes or otherwise.*"

The Act of 1867, in its stipulations and provisions for the security of the creditors, the bondholders, of the Liquidating Levee District, was declared by the Supreme Court of the State to be a contract, inviolable and irrepealable, in the case of *Gibbs* v. *Green* (54 Miss.).

The contention made in the bill by the plaintiffs in error, in this case, is that the twelve years' taxes levied by the Act of 1871, creating Levee District No. 1, were charged upon the lands purchased and held by the Liquidating Levee Commissioners, and that the exemption from taxation given by the Act of 1867, to preserve this trust fund and security held for the creditors of the Liquidating Levee Board, was repealed by the Act of March 17, 1871. The Legislature could not repeal it, for

a repeal would have impaired the contract rights of the creditors of the Liquidating Levee Board.

Upon this pretension rest the so-called equities of these plaintiffs in error.

The defendants in error thus appear, in the case, as the purchasers of the legal title to the lands from the Liquidating Levee Commissioners, and have acquired the *equitable title and ownership of the bondholders of the Liquidating Levee Board, under the Act of 1867.*

By this proceeding the effort is made to charge the taxes of District No. 1 upon these lands during the period while they were held by the Liquidating Levee Commissioners, and while they were, by the Act of 1867, exempt from all taxes and local assessments.

It is not pretended or suggested by the bill, that these defendants in error failed to pay all taxes on the lands, since their purchase, under the Green *v.* Gibbs decree, from the State Auditor and Treasurer, who were *ex-officio* Liquidating Levee Commissioners, including the taxes due to the Commissioners of Levee District No. 1.

It is thus seen that the equities and rights of the defendants in error are superior, and could only be defeated by holding that the contract features and stipulations of the Act of 1867 were repealed by the Act of March 17, 1871, and that the latter act could constitutionally and legally repeal the exemption clause of the Act of 1867.

It was not the intention of the Act of 1871 to repeal any part of the Act of 1867, and this appears very plainly from the statute itself, construed by the ordinary rules of interpretation in respect to repeals of statutes by implication.

It thus appears that this is not a suit in *personam* for the recovery of the bonds by the plaintiffs in error, but is an effort to charge the bonds on the lands of the defendants in error upon the theory that the Act of 1871 repudiated the contract exemption clause of the Act of 1867.

These plaintiffs in error, as did all the holders of the bonds issued by Levee District No. 1, necessarily purchased with a full knowledge of the paramount provisions of the Act of 1867.

They accomplish nothing, therefore, by reciting, at length, the terms of the Act of 1871.

I.

The well settled law in regard to the jurisdiction of this Court upon a writ of error to a State Court, under section 709 of the Revised Statutes, has been stated clearly and distinctly in recent decisions of the Court, to which attention is respectfully invited.

Mr. Justice Shiras, delivering the judgment of the Court, in *Eustis* v. *Bolles* (150 U. S., 361, 366), said:

"It is settled law that to give this Court jurisdiction of a writ of error to a State Court, it must appear affirmatively not only that a Federal question was presented for decision by the State Court, but that its decision was necessary to the determination of the cause, and that it was *actually decided adversely to the party claiming a right under the Federal laws or Constitution, or that the judgment as rendered could not have been given without deciding it. Murdock* v. *Memphis*, 20 Wall., 590; *Cook County* v. *Calumet and Chicago Canal Co.*, 138 U. S., 635.

"It is likewise settled that, where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has also been raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this Court will not review the judgment."

The learned Justice, in that case, further said:

"Having reached the conclusion that we are not called upon to determine any Federal questions, nor to consider whether the State Court was right or wrong in its decision of the other question in the case, it only remains to inquire whether that conclusion requires us to affirm the judgment of the court below, or to dismiss the writ of error. An examination of our records will show that, in similar cases, this Court has sometimes affirmed the judgment of the Court below, and has sometimes dismissed the writ of error. This discrepancy may have originated in a difference of views as to the precise scope of the questions presented. However that may be, we think that, when we find it unnecessary to decide any Federal question, and when the State Court has based its decision on a local or State question, our logical course is to dismiss the writ of error. This was the judgment pronounced in Klinger *v.* Missouri, 13 Wall., 257; N. O. Waterworks *v.* Louisiana Sugar Co., 125 U. S., 18; Kreigher *v.* Shelby Railroad, 125 U. S., 39; De Saussure *v.* Gaillard, 127 U. S., 216; Hale *v.* Akers, 132 U. S., 554; Hopkins *v.* McLure, 133 U. S., 380; Johnson *v.* Risk, 137 U. S., 300, 307; and in numerous other cases which it is unnecessary to cite. Accordingly, our judgment is that, in the present case, the writ of error must be dismissed."

The Court, speaking by the Chief Justice, in *Powell* v. *Brunswick County* (150 U. S., 433, 440), said:

"As many times reiterated, it is essential to the maintenance of jurisdiction upon the ground of erroneous

decision as to the validity of a State Statute, or a right under the Constitution of the United States, that it should appear from the record that the validity of such Statute was drawn in question as repugnant to the Constitution, and that the *decision sustained its validity*, or that the right was *specially set up or claimed and denied.* * * * A definite issue as to the validity of the Statute or the possession of the right must be distinctly deducible from the record before the State Court can be held to have disposed of such a Federal question by its decision."

The learned Chief Justice, speaking for the Court, in *Schuyler National Bank* v. *Bollong* (150 U. S., 88), said:

"But by the requirements to the exercise of our jurisdiction of section 709 of the Revised Statutes, the title, right, privilege, or immunity thus relied upon must be *specially set up or claimed in the State Court at the proper time and in the proper way.* The decision must be against the title, right, privilege, or immunity so set up or claimed. Spies *v.* Illinois, 123 U. S., 131; Brooks *v.* Missouri, 124 U. S., 394; Chappell *v.* Bradshaw, 128 U. S., 132; Texas & Pacific Railway *v.* Southern Pacific Co., 137 U. S., 48."

In the recent case of *Sayward v. Denny* (158 U. S., 180–183), the Chief Justice, speaking for the Court, in stating again the requirements in respect to the jurisdiction of the Court, under § 709 of the Revised Statutes, said: "7. Or, at all events, it must appear from the record, by clear and necessary intendment, that the Federal question was directly involved, so that the State Court *could not have given judgment without deciding it;* that is, a definite issue as to the possession of the right must be distinctly deducible from the record before the State Court can be held to have disposed of such Federal question by its decision. *Powell* v. *Brunswick County, 150 U. S., 400–433.*"

II.

It appears affirmatively by the record that the Court below, in rendering its decree for the dismissal of the bill, gave no effect whatever to any State legislation subsequent to the Act of 1871, and decided only that under the Act of 1871, and the law of Mississippi, the so-called bonds in question were void in their inception for want of any power in the Levee Board to make and utter them.

This Court will examine the record of the State Court to ascertain the grounds upon which the decision was rendered.

Murdock *v.* City of Memphis, 20 Wall., 635;
McManus *v.* O'Sullivan, 91 U. S., 578;
De Saussure *v.* Gaillard, 127 U. S., 127.

In this connection there are numerous other cases cited in the briefs for the defendants in error now on file.

By the statute of the State of Mississippi the opinion of the Supreme Court constitutes a part of the record of the cause.

The statute is as follows:

"In all cases settling important principles, and in cases to be remanded, the opinion of the Court shall be in writing, stating the *reasons upon which the decision is made*, which shall be recorded by the clerk in a well bound book, to be kept for that purpose, for which he shall receive fifteen cents for every hundred words, payable half yearly, out of the State Treasury, on the certificate of any of the judges, that the service has been performed, and that the account is just."

Code 1880, § 1413.

It is not pretended in the *assignment of errors,* in this record, that the existence of the subsequent statutes presents a Federal question, or that the decision of the State Court gave effect to those statutes. (Rec., p. 82.)

Upon an examination of the opinion of the State Court it clearly appears that the subsequent statutes were not considered, and it further appears expressly that no effect was given to them.

The decision stands in all respects as if the subsequent statutes had never been enacted; and the operation and effect of the decision of the Court is precisely the same as if the statutes were not in existence.

If there had been a subsequent statute expressly declaring these so-called bonds invalid, and the decision that the contract was void in its inception, rested upon grounds or considerations entirely independent of the statute, there would be no Federal question presented.

Upon this precise proposition the attention of the Court is invited to the following cases: *Delmas* v. *Insurance Company* (14 Wall., 665); *Palmer* v. *Marston* (14 Wall., 10); *Tennessee Bank* v. *Bank of Louisiana* (14 Wall., 9), and *Morrow* v. *Brinkly* (129 U. S., 178).

In Delmas *v.* Insurance Company, the State Court had given as the ground of its decision holding a contract based on Confederate money to be void, a subsequent law which declared this class of contracts illegal. Effect was thereby given to the subsequent law. This Court took jurisdiction, and decided that the contract was legal and binding.

14 Wall., 665.

In the case of Tennessee Bank *v.* Bank of Louisiana, the decision of the State Court declaring notes given for Confederate money to be illegal, rested upon the subsequent law, and as well upon the general principles of jurisprudence and the public policy of the State. And this Court held that a Federal question was not presented.

14 Wall., 665.

In *Palmer* v. *Marston*, the decision of the State Court that a note given for Confederate money was illegal, rested alone upon the general principle of the jurisprudence of the State, and this Court decided that a Federal question was not involved in the case.

14 Wall., 10.

Morrow v. *Brinkly* was a case where the Legislature of the State of Virginia, in 1862, had passed an act confiscating the property of the plaintiff in error. The State Court's decision against the plaintiff in error was based upon the defense of laches or estoppel, and although it was clear that the statute of the State was unconstitutional and void, it was held by this Court on writ of error to the State Court that there was no Federal question.

129 U. S., 178.

In the case last cited, the enforcement of the contract was denied upon a ground other than the invalidity of the contract, but it was not supposed in any of these cases, that the mere fact of the presence or existence of a subsequent law, gave this Court jurisdiction.

There may be a subsequent law impairing the contract, but when the State Court decides the contract invalid for any cause, or refuses to enforce the contract

because barred by limitation, or on the ground of any other valid defense, the Federal jurisdiction does not exist where the decision does not give effect and vitality to the subsequent statute.

In the case of *Chapman* v. *Goodnow* (123 U. S., 543), the decision of the State Court was upon a State and not a Federal question, the latter being raised but not decided by the State Court. The decision of the State Court was upon the construction of a new promise, and behind that lay the undecided Federal question. Upon the case as presented, this Court said there was no Federal question involved.

123 U. S., 543.

The case of *Chicago Insurance Company* v. *Needles* (113 U. S., 579), contains the doctrine repeatedly announced by the Court, that although the Federal question is not passed upon by the State Court, yet if the final judgment necessarily involved an adjudication of the Federal question, this Court will take jurisdiction. In this case, the proceeding itself rested upon a subsequent statute which, as alleged, impaired the obligation of the contract.

113 U. S., 579.

In *Bryan* v. *Board of Education* (151 U. S., 639), cited in Mr. Maxwell's brief, the precise question presented to and decided by the State court, was whether a subsequent law did impair the obligation of the contract. It was held by the State Court that the statute did not impair the obligation of the contract, and this decision was affirmed by this Court. This case is clearly not in point, while the decision in *Mobile and Ohio Railroad Company*

v. *Tennessee* furnishes a clear and forcible illustration of the doctrine so often announced by this Court, that the decision of the State Court must sustain the subsequent statute, or its necessary effect must be to put the subsequent statute into operation, that is, the decision must give effect to the subsequent statute.

If the decision does not rest upon the subsequent statute, but upon grounds wholly apart and distinct from it, and no effect is given to it by the decision, then the Federal question is not involved.

In the case of *Mobile & Ohio Railroad Co.* v. *Tennessee* (153 U. S., 486, 492, 493, 494, 495) the Court below gave effect to the revenue statutes of the State, subsequent to the charter of the Railroad Company, on the ground that the charter exemption was unconstitutional.

Mr. Justice Jackson, speaking for the Court, stated that the "established rule" is, "that where the judgment of the highest Court of a State, by its terms or necessary operation, *gives effect* to some provision of the State law which is claimed by the unsuccessful party to impair the contract set out and relied on, this Court has jurisdiction to determine the question whether such a contract exists as claimed, and whether the State law complained of impairs its obligation."

The Chief Justice, speaking for the Court, in *Wilmington & Weldon Railroad* v. *Alsbrook* (146 U. S., 293), said:

"The jurisdiction of this Court is questioned upon the ground that the decision of the Supreme Court of North Carolina conceded the validity of the contract of exemption contained in the Act of 1834, but denied that particular property was embraced by its terms; and that, therefore, such decision did not involve a Federal question.

"In arriving at its conclusions, however, the State Court *gave effect to the revenue law of 1891, and held that the contract did not confer the right of exemption from its operation.* If it did, its obligation was *impaired by the subsequent law,* and as the inquiry whether it did or did not was necessarily directly passed upon, we are of opinion that the writ of error was properly allowed. *New Orleans Water Works* v. *Louisiana Sugar Co., 125 U. S., 18, 38.*'"

The case of *Louisiana* v. *Pilsbury* (105 U. S., 278) seems to be relied upon by the plaintiffs in error, to some extent, as giving support, or, at least, countenance to the new theory now suggested, outside of the assignment of errors, in respect to the jurisdiction of this Court to review the decree of the Court below in the present case; but the decision in that case presents no exception whatever to the rule so often declared and applied by this Court in cases arising under the clause of the Constitution which forbids a State to pass any law impairing the obligation of contracts, namely:

"If the highest Court of the State decides nothing but the original construction and obligation of a contract, this Court has no jurisdiction to review its decision; but if the State Court *gives effect* to a subsequent law, which is impugned as impairing the obligation of a contract, this Court has power, in order to determine whether any contract has been impaired, to decide for itself what the true construction of the contract is." (*Huntington* v. *Attrill,* 146 U. S., 657, 658; cited and approved in *Mobile and Ohio Railroad* v. *Tennessee,* 153 U. S., 494.)

The learned Court, in the case of *Louisiana* v. *Pilsbury,* showed by an extended review of the decisions of the Supreme Court of Louisiana upon the Constitution of 1845, requiring uniformity and equality of taxation, that there could be no *question* whatever as to the validity of

the Act of 1852, so far as the consolidated bonds of the City of New Orleans were concerned, and the provisions made by it and the supplementary Act for the annual levy of a tax of $650,000 to pay the interest and reduce the principal.

And the Court, speaking by Mr. Justice Field, said:

"Whether such a construction was a sound one *is not an open question in considering the validity of the bonds.* The exposition given by the highest tribunal of the State must be taken as correct so far as *contracts made under the Act are concerned.* Their validity and obligation can not be impaired by any *subsequent decision* altering the construction. This doctrine applies as well to the construction of a provision of the organic law, as to the construction of a statute. The construction, so far as contract obligations incurred under it are concerned, constitutes a part of the law as much as if embodied in it. So far does this doctrine extend, that when a statute of two States, expressed in the same terms, is construed differently by the highest courts, they are treated by us as different laws, each embodying the particular construction of its own State, and enforced in accordance with it in all cases arising under it. *Christy* v. *Pridgeon*, 4 Wall., 196, and *Shelby* v. *Gery*, 11 Wheat., 361. The statute as thus expounded determines the validity of all contracts under it. A subsequent change in its interpretation can effect only subsequent contracts. The doctrine on this subject is aptly and forcibly stated by the Chief Justice in the recent case of *Douglass* v. *County of Pike*, 101 U. S., 677, 687. 'The true rule,' he observes, 'is to give a change of judicial construction in respect to a statute the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment; that is to say, make it prospective, not retroactive. After a statute has been settled by the judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision is, to all intents and purposes, the same in its effect on contracts as an amendment of the law by means

of a legislative enactment.' See, also, *Gelpcke* v. *City of Dubuque*, 1 Wall., 175; *Havemeyer* v. *Iowa County*, 3 *id.*, 294; *Thomson* v. *Lee County*, *id.*, 327; *Lee County* v. *Rogers*, 7 *id.*, 181; *Chicago* v. *Sheldon*, 9 *id.*, *Olcott* v. *The Supervisors*, 16 *id.*, 678; *Fairfield* v. *County of Gallatin*, 100 U. S., 47.

"We refer to this doctrine, not from any doubt as to the correctness of the construction of the article of the Constitution of 1845, given by the Supreme Court of the State, but in answer to the objections of counsel and the *position of the Court below*."

The Supreme Court of Louisiana necessarily gave effect to the repudiating Premium Bond Act of 1876.

III.

The only questions decided by the Court below, in dismissing the bill upon the ground of demurrer referred to in its opinion, were upon the construction, that is to say, the meaning and intent, of the Act of 1871, in respect to the authority conferred by it upon the Levee Board, the construction of the so-called bonds, and the municipal law of the State of Mississippi in respect to the validity of the bonds as purporting to be made and uttered by the Levee Board under the pretended authority of the Act of 1871. These questions were and are purely and intrinsically questions of the local law of the State of Mississippi.

A careful examination of the argument of Mr. Green will show that the learned counsel does not claim that the Act of 1871 *authorized* the Levee Board to issue bonds payable by their express terms in gold coin of the United States. (Brief of Mr. Green, p. 11.)

His position is that the so-called bonds are not necessarily by their terms payable in gold coin.

The "bond" exhibited with the bill acknowledges an indebtedness in "one thousand dollars in gold coin," and promises to pay "said sum."

This necessarily implies a promise to pay gold coin, the acknowledgment of the indebtedness being for one thousand dollars in gold coin, the words "said sum" necessarily meaning one thousand dollars in gold coin.

The fact that the coupons are payable expressly in currency makes the purpose to pay the principal in gold coin the more apparent.

But the question was one for the State Court, which held that the bonds were payable by their terms, upon the construction of the face of the paper itself, in gold coin. The question is certainly not a Federal question.

The State Court did not undertake to decide, under the Legal Tender Acts, that gold contracts could not be paid in Treasury notes; but in construing the State statute the State Court assumed as a fact to be considered, in view of all the conditions then existing, that gold coin contracts were to paid in gold coin.

This Court had expressly so declared the construction of the Legal Tender Acts.

Bronson *v.* Rodes, 7 Wall, 229;
Trebilcock *v.* Wilson, 12 Wall., 697;
Gregory *v.* Morris, 96 U. S., 619.

In *Gregory* v. *Morris*, where the contract was made after the Legal Tender Acts, this Court expressly decided that the Court below properly refused the following instruction:

"That no agreement or contract to pay a certain number of dollars in gold can be enforced. The National

And so was the decision in *Gregory* v. *Morris* (96 U. S., 619), where, as has been said, the gold contract was made after the enactment of the Legal Tender Laws of Congress.

Chief Justice Waite there said: "While gold coin is in *one* sense money, it is in *another* sense an article of merchandise."

The State Court further said that it knew judicially that at the time of the issuance of the bonds, gold coin was not in circulation; that it did not form any part of the circulating medium of the country; that "*it was money, but of much greater value than the circulating medium consisting of United States Treasury notes and National bank notes, of which we take judicial notice,*" citing *Gay's Gold* (13 Wallace, 361) where this Court *took* judicial notice of the fact that gold was not in circulation, but, in the language of the Court, "*was bought and sold at fluctuating prices, and was the object of a large and active traffic.*"

The State Court did not declare that gold was not "money," but that it was not part of the then existing circulating medium of the country. It expressly said that it was money.

It did not declare the absurdity, that a gold "dollar" was not a "dollar," but that it was not the purpose of the Legislature to give the power to this Levee Board to make a bond that could only be paid in gold coin, of which there was none at that time in circulation, and which was at a high premium, and might go to a still higher premium.

It can not be perceived how the fact that the Legislature of the State did not give the power to this Board of making special gold coin contracts, has contravened any

Federal policy, or how the decision of the State Court giving this construction and effect to the State statute has violated any Federal law, or dealt with any Federal question.

In *Trebilcock* v. *Wilson* (12 Wall., 687) cited by Mr. Maxwell, the decision of the State Court was upon a direct construction of the Legal Tender Acts, and it was erroneously held by the State Court that legal tender notes were legal tender for the payment of a contract payable by its terms in specie. (12 Wall., 687.)

The cases of *Bronson* v. *Rodes* (7 Wall., 229) and *Butler* v. *Horwitz* are similar to the case of *Trebilcock* v. *Wilson*.

It seems perfectly manifest that, in the ultimate analysis of the decision of the Court below, the final question adjudged by it in respect to these so-called bonds was not different in its legal character from the question propounded to and determined by it in the case of *Woodruff* v. *Okolona* (57 Miss., 806), which this Court had occasion to consider in *Barnum* v. *Okolona* (148 U. S., 393, 395).

As *Barnum* v. *Okolona* was before this Court on writ of error to the Circuit Court of the United States, and the bonds were acquired before the decision in *Woodruff* v. *Okolona*, it was, of course, not absolutely bound by the decision of the Supreme Court of Mississippi in *Woodruff* v. *Okolona*.

This Court, however, took the same view of the law in respect to the bonds there in question as the Supreme Court of Mississippi.

The distinction between cases coming to this Court under the old 22d section of the Judiciary Act of 1789,

and cases brought to this Court under the 25th section of that Act, has been pointed out in many decisions.

Gelpcke v. *Dubuque* (1 Wall., 206) came here under the 22d section of the Judiciary Act.

Railroad Co. v. *McClure* (10 Wall., 511) was brought up under the 25th section; and Mr. Justice Swayne, speaking for the Court, said:

"*The question of the validity of the bonds is not one of Federal jurisdiction.*

The 25th section of the Judiciary Act of 1789 specifies the questions of which we can take cognizance in this class of cases, and expressly excludes all others from our consideration.

It is clear that the question before us is not within the affirmative category.

If the case had been brought up from the Circuit Court under the 22d section of the Judiciary Act, this question and all others arising on the record would have been open for examination."

In *Leffingwell* v. *Warren* (2 Black, 255), this Court held that the construction given to a State statute, by the highest judicial tribunal of the State, is to be regarded "as part of the statute, and as binding upon the Courts of the United States as the *text*."

In *Machine Co.* v. *Gage* (100 U. S., 676), on writ of error to the Supreme Court of Tennessee, which had construed the State statute involved, this Court said:

"We are bound to regard this construction as correct, and to give it the same effect as if it were part of the statute."

The subject was again exhaustively examined by Mr. Justice Strong in *Fairfield* v. *County of Gallatin* (100 U. S., 52), where it was said that the intepretation given by

the highest court of a State to a State statute "is accepted as the true interpretation, whatever may be our opinion of its original soundness."

The same learned Judge, speaking for the Court, in *Supervisors* v. *United States* (18 Wall., 80), referring to this rule of decision, said:

"And we adopt the construction of a State statute settled in the Courts of the State, though it may not accord with our opinion.

"*There is every reason for this in the consideration of statutes defining the duties of State officers.*"

Mr. Justice Clifford, speaking for the Court, in *City of Richmond* v. *Smith* (15 Wall., 438), said:

"State Courts certainly have a right to expound the statutes of the State, and having done so, those statutes, with the interpretation given to them by the highest Courts of the State, become the rules of decision in the Federal Courts."

Agreeably to the doctrine thus stated, so often by this Court, the question of the validity of the bonds, under the Act of 1871, is not open for examination on this writ of error under § 709 of the Revised Statutes.

IV.

The case of Judson v. Bessemer (87 Ala., 240) and Farson et al. v. Board of Commissioners (16 Ky. Law R., 856), are of no value whatever in the consideration of the alleged Federal question.

These cases, which related, as we understand, to bonds made after the resumption of specie payments, proceeded upon the ordinary rules for construing the powers of Municipal Corporations, and the State Courts of these

two States, and the Supreme Court of Mississippi, differed possibly in the conclusions reached. Whether the one view or the other taken by the State Courts is correct is wholly immaterial, for the question whether the Supreme Court of Mississippi has made an erroneous decision is not involved in the present inquiry.

V.

The idea that the Act of the Mississippi Legislature, March 5, 1884, validated these so-called bonds is entirely erroneous.

That Act only permitted the bonds and coupons to be received in certain land redemptions. It went no further. The whole question of the validity of the bonds was before the State Court, including the Act of 1884, and upon the whole case the adjudication was that the bonds were illegal and void, and thus all questions were embraced and concluded. It was, in all its phases, including the point whether the Act of 1884 had validated the bonds, a local question arising upon the construction of a local statute, and not a Federal question.

VI.

The contention that although the bonds are void, there is still a debt due to the bondholders for the money lent to the Levee Board, to which the plaintiffs in error may apply the benefits of the Act of 1871, is wholly without any foundation in law.

This is not a suit for money had and received, but a proceeding to enforce the bonds as such—which are illegal. No such claim is presented by the bill, nor was it suggested in the State Court. If such a question had

been presented by the bill in the State Court, if the bill had been presented with this double aspect, it is entirely too clear for argument that such a question would have been purely a State question to be considered and decided upon the ordinary rules and principles of law, and would have presented no features or flavor whatever of a Federal question.

The question whether any change can be made in the terms of the bonds issued in excess of statutory power, and the excess cancelled, and the residue ascertained and enforced by a Court of Equity, was fully considered and conclusively determined, by this Court, in the negative, in the case of *Hedges* v. *Dixon County* (150 U. S., 182–192), cited and quoted in Mr. Ashton's brief, filed at the October Term, 1894, and which we will not now repeat. (Brief, pp. 4, 5.)

VII.

We respectfully submit to the Court, in conclusion:

(1) *That the State Court has simply construed its own State statute, creating this Levee Board, upon the question whether it exceeded its powers in making these so-called negotiable bonds, which is a local State question.*

(2) *That the State Court has not undertaken to construe the Legal Tender Acts, but to interpret and construe the State statute, and that in doing this it has not decided, nor attempted to decide, what are "dollars," or what is money within the meaning of the Legal Tender Acts.*

But recognizing, as it does, the fact that there are various kinds of dollars and money, authorized by the Acts of Congress, the precise question was whether the State statute contemplated in its grant of power to the Levee Board that the

Board should issue its negotiable bonds, payable in such terms that they might be paid in any kind of dollars which were legal tender by Federal authority, or whether the Board might make special gold coin contracts.

(3) *The State statute has been construed by the State Court to deny the power to the Levee Board to make and issue special gold coin contracts, and only to empower and authorize the Board to issue negotiable bonds, payable in terms in dollars generally. The statute thus stands in effect as if it had in express terms declared that the bonds should be issued in such terms as to be payable in any kind of legal tender dollars.*

A State statute enacted in such terms could not offend any Federal authority; for the State has the power to provide how municipal obligations shall be payable. A State is not required, by any Federal authority, in creating its municipal corporations, to confer upon them the power of making special gold coin contracts. If the Legislature may enact such a statute, it would follow, necessarily, that the decision of a State Court, so construing a State statute, would not involve and determine a Federal question.

We respectfully submit that the case is not within the jurisdiction of the Court, under section 709 of the Revised Statutes.

FRANK JOHNSTON,
Counsel for the Delta and Pine Land Company.

J. HUBLEY ASHTON,
WM. G. YERGER,
Counsel for the Louisville, New Orleans and Texas Railroad Company.

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SUPREME COURT OF THE UNITED STATES

October Term, 1891.

AMOS WOODRUFF, ET AL, PLAINTIFFS IN ERROR,

No. 1561.] vs.

THE STATE OF MISSISSIPPI, ET AL, DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

Johnston

SUPREME COURT OF THE UNITED STATES

October Term, 1891.

AMOS WOODRUFF, ET AL, PLAINTIFFS IN ERROR,

No. 1561.] VS.

THE STATE OF MISSISSIPPI, ET AL, DEFENDANTS IN ERROR.

The brief and argument submitted on the motion made at a former term, the Court is requested to consider as my argument upon the proposition that this Court has no jurisdiction of the case, a proposition which I now bring to the attention of the Court, and upon which all the defendants in error rely as decisive of the case.

In this connection I will state that on the motion to dismiss for want of jurisdiction, this Court declined to consider the jurisdictional question, preferring I presume, to consider that question on the general submission of the cause, and the motion is accordingly now re-submitted and the Courtis asked to dismiss this writ of error because of the want of jurisdiction.

I will now state the case in its general aspects, other than its jurisdictional phases, and present an argument upon those questions involved in the controversy

that may arise in the event that the Court should be of opinion that the jurisdiction exists.

STATEMENT OF THE CASE.

The plaintiffs in error, as creditors of Levee District No. 1, exhibited their bill in the Chancery Court of Hinds county, State of Mississippi, for the purpose of charging the lands claimed by the Delta and Pine Land Company, the Louisville New Orleans & Texas Railroad Company and N. T. Burroughs, with the payment of the bonds of said Levee District No. 1, held by the complainants, amounting, principal and interest, to about $600,000.

The plaintiffs in error base their claim to reach and subject these lands to the payment of their bonds upon the statute of March 17th, 1871, which created Levee District No. 1; and the defendants in error claim title paramount to these lands under the Act of December 2nd, 1858, creating the original Levee District, known subsequently as the Liquidating Levee District, and amended by the Act of February 13th, 1867. This district embraced the counties of De Soto, Tunica, Coahoma, Bolivar, Washington, Issaquena, Yazoo, Sunflower, Tallahatchie and Panola.

The case was heard on bill and demurrers, and the statement of the facts of the case for all present purposes is contained in the bill and exhibits.

On December 2d, 1858, the first Levee Act was passed by the Legislature of Mississippi, creating a Board of Levee Commissioners for the Mississippi and Yazoo Delta, with power to build levees, borrow money and issue bonds. An annual tax of ten cents per acre was levied on all the lands in the Delta subject to overflow, for the purpose of building levees and the payment of bonds issued therefor, to continue for the period of five years.

This tax was charged as a lien upon the lands, and was dedicated and to be applied, in the language of section three of the statute, "specifically to the liquidation of the debts heretofore contracted or accruing under contracts entered into by the levee authorities." And again, by section fourteen of the act, it was further declared "that said Board of Levee Commissioners may issue its scrip, payable at such periods as they may stipulate, but not beyond the first day of January, 1863, and in such sums as they may see proper, but not to exceed the sum of half a million dollars, and the tax hereby assessed and denominated a general fund, shall stand pledged for the redemption of said scrip."

Full power was given to the tax-collectors of the several counties lying within the Levee District to sell all delinquent lands for taxes, and the Board of Levee Commissioners, in default of bidders, were required to purchase such lands and hold them in trust for the payment of the debts of the District.

A large debt was contracted under the authority of this statute and for which the bonds, or scrip, of the District were issued, the validity of which was never questioned. The civil war coming on, the five year's taxes provided by the statute were not collected, this debt was not paid and a large amount of interest had accumulated, when in February, 1867, a compromise was effected between the State, acting for the Levee Board, and the holders of these levee bonds, by which one-third of this debt was abated, and new bonds were issued for the balance of the entire debt upon the trusts and securities created by the statute of February 13th, 1867.

By this statute a specific tax *in rem* was placed upon all the lands in the District for the purpose of paying the new bonds, and for no other purpose whatever, and

this tax was to continue in force and be collected annually until the entire debt liquidated by the statute was paid.

Upon default in the payment of taxes, the delinquent lands were to be sold, and in default of bidders for the full amount of taxes due, the Board of Liquidating Levee Commissioners were required to purchase the lands at such tax sales and hold the same as a trust fund for the payment of the new bonds.

The owners were allowed two years within which to redeem the lands sold at tax sales upon the payment of all accumulated state, county and levee taxes.

But after the period for redemption had expired, the lands vested absolutely in the Liquidating Levee Commissioners, and they had the power to sell the same on any terms and for any price within their judgment and discretion. In a word, they could sell for the highest price obtainable and beyond the aggregate sum of all the taxes, or for a sum less than the accumulated legal taxes, if that was the value of the land.

Acts 1858, §5, p. 38.
Acts 1867, §13, p. 246.

The taxes collected, and the proceeds of all land sales made by the Commissioners were to be applied to the payment of the bonds of the Liquidating Levee District, and after the full payment of all the bonds issued under the statute, any surplus of money in the treasury of the Levee Board and all lands held by the Board should be subject to the control and disposition of the Legislature.

Finally, it was expressly provided, as a means of facilitating the operations of the Liquidating Levee Board in the payment of its debts, and to render the lands thus purchased and held by the Board available as a trust fund for the payment of its bonds, that all

lands held by the former Commissioners under the act of December 2nd, 1858, as well as all lands acquired by the new board created by the act of February 13th, 1867, "shall be exempt from State taxation, for levee purposes or otherwise, until the same shall be sold or disposed of by this board." There was a *proviso* which directed that where the lands were redeemed, within the period allowed for redemption, then the owner was required to pay all state, county and levee taxes that would have been due and payable on said land if the same had not been struck off to the Levee Board. But this left the intention and direction clear, that after the period of redemption had expired the lands were exempt from taxation, and could be sold on such terms as the Commissioners deemed advisable.

In the years 1868, 1869 and 1870, many of the lands owned by the Defendants, together with other large quantities of land in the Delta, were sold at levee tax sales under the act of December 2nd, 1858, and the amendatory act of February 13th, 1867, purchased by the Liquidating Levee Board and held by said Board as a trust fund for its creditors whose debts were liquidated and secured by the act of February 13th, 1867.

There was little or no demand for these lands, and the great bulk of them continued to be held by the Liquidating Levee Commissoners, until the year 1881, when they were sold by the Levee Commissioners under proceedings which will now be explained.

On February 1st, 1877, the Legislature by a statute of that date undertook to interfere with the scheme propounded by the statute of February 13th, 1867, by requiring a new registration of the bonds issued under the act of 1867, and the issuance of new bonds for only one-third of the debt, thus scaling the bonds to the extent of one-third of their face value. This statute was

invalid and was so pronounced by the Supreme Court of the State.

Mr. Joshua Green was one of the largest creditors of the Liquidating Levee Board. On February 20th, 1877, Mr. Green for himself and the other creditors of the Liquidating Levee Board, holding bonds issued under the compromise act of 1867, filed a bill in the Chancery Court of Hinds county at Jackson, against Gwin, Auditor, and Hemingway, Treasurer of the State, and *ex-officio* Liquidating Levee Commissioners, as well as against the State of Mississippi, for the purpose of enforcing their lien or trust by a sale of the lands thus purchased and held by the Liquidating Levee Commissioners as a trust fund for the payment of their bonds.

Demurrers to that bill were overruled, and on appeal the decree of the Chancery Court was affirmed, and it was held by the Supreme Court of the State that these lands constituted a trust fund dedicated exclusively and irrevocably to the creditors of the Liquidating Levee Board and to be sold for the payment of their bonds. The act of February 1st, 1877, was declared to be void as violating the contract act of February 13th, 1867.

Thereupon all these lands were sold under the decree of the Chancery Court in said cause by the Liquidating Levee Commissioners in the years 1881 and 1882. A large quantity was thus sold in 1881 to one E. C. Gordon, which was subsequently acquired by the Delta and Pine Land Company, and in part by N. T. Burroughs, and another large lot of lands was thus sold in 1882 to the Vicksburg and Memphis Railroad Company and afterwards acquired by succession by the Louisville, New Orleans and Texas Railroad Company.

Many of these lands were sold to the State of Mis-

sissippi for taxes under what is commonly known as the abatement act of 1875, which gave the State some color of title.

On March 14th, 1884, a statute was passed for the benefit of all the purchasers under the decree in the case of Joshua Green, and under this statute deeds were made conveying whatever title the State had to the Delta and Pine land Company and to N. T. Burroughs to the lands acquired by them respectively from the Liquidating Levee Commissioners.

And again, under the act of March 2d, 1888, a statute intended to protect and quiet the titles of the purchasers under the Green decree, deeds conveying the State's claim of title were executed respectively to the Delta and Pine Land Company, the Louisville, New Orleans and Texas Railroad Company, and to N. T. Burroughs.

It does not appear from the bill in this cause that the State had any claim or source of title other than the abatement act tax sales in 1875, which were all made subsequent to the sales to the Liquidating Levee Commissioners in 1868, 1869 and 1870.

This constitutes a general outline of the defendants' title.

The claim of the plaintiffs in error to reach and charge the lands of the defendants in error with the payment of their bonds can be stated as follows:

Four years after the enactment of the statute of February 13th, 1867, compromising and re-adjusting the debt of the Liquidating Levee District, the act of March 17th, 1871, was passed by the Mississippi Legislature creating Levee District No. 1, composed of the counties of DeSoto, Tunica, Coahoma, Tallahatchie and six townships of the county of Sunflower.

The Levee Commissioners created by this statute were granted the power to build levees, borrow money, and to that end to "issue the bonds of said Board to the

amount of one million of dollars, in such sums and denominations, not less than one hundred dollars each, as the Board may prescribe, to be sold at not less than *ten per centum* discount. A tax of two *per centum ad valorem* was laid upon all the lands in District No. 1, the lands were placed by legislative assessment in two classes at $5.00 and $3.00 per acre respectively, and this tax was to continue for the period of twelve years for the payment of the debts of the Board.

Upon delinquency, the lands were to be sold at tax-sale for taxes, and the Levee Board was authorized, in default of bidders, to buy at these tax sales and hold the lands thus purchased. [redacted] The land owners had two years (by typographical error printed in the act ten years), within which to redeem by the payment of all delinquent taxes of every description, and after the period of redemption had expired the Levee Board was authorized to sell the lands thus purchased, for not less than the amount bid by the Board, together with all accruing taxes, charges, assessments and costs with interest at the rate of ten *per centum* from the dates when the several items of taxes and charges were due.

The Board of Levee District No. 1 issued in the year 1871 ten-year coupon bonds to the amount of one million of dollars, payable in express terms exclusively in gold coin.

During the years 1872, 1873, 1874, 1875 and 1876, inclusive, a large quantity of lands, embracing much of the lands claimed by the defendants, was sold to the Levee Board No. 1, but no identification of any of the lands is made by the bill.

Several statutes were passed subsequent to the act of February 13th, 1867, extending the time within which the claims of the creditors of the Liquidating Levee District might be presented and new bonds issued under

the compromise arrangement. In 1875 a statute was passed abating certain taxes prior to 1874, including levee taxes. The complainants insist that these statutes are invalid.

By the statute of April 11th, 1876, the Auditor and Treasurer of the State were made *ex-officio* the commissioners for Levee District No. 1, and were clothed with all the powers of the original commissioners. And by act of March 5th, 1884, Levee District No. 1 was abolished, the board dissolved, and the act of April 11, 1876, repealed. This statute complainants contend is unconstitutional and invalid.

The bill fails to indicate what lands were purchased by the Liquidating Levee Commissioners, or the lands sold to District No. 1. It entirely fails to indicate or identify what lands, if any, were sold by the State without the payment of District No. 1 taxes. Discovery is prayed of all these facts essential to complainants' case, and at the same time the bill shows that this information is contained in the public records of the Auditor's office, and the records of the Liquidating Levee Commissioners, and the Commissioners of District No. 1, and accessible to complainants.

The relief prayed by the plaintiffs in error is, that all the lands owned or claimed by the defendants lying in District No. 1 shall be charged with the payment of all the taxes due to District No. 1, regardless of sales made to the Liquidating Levee Board, and regardless of the abatement act of 1875, to be ascertained by an accounting on the basis of assessment fixed by the act of March 17th, 1871, and that upon the coming in of the report, that a decree shall be made for a sale of all the lands in District No. 1 thus delinquent for taxes, said sale to be made for cash, "for the amount of taxes, costs, charges, damages and interest as by said

report shall appear to be due so far as the purchase money due to the Levee Board of District No. 1 is concerned, and for the state and county and other taxes due thereon, according to law, and to execute a deed or deeds to the purchaser thereof.

"That said commission shall also ascertain and report the amounts due complainants on their bonds and coupons, and report the same to the court.

"That the said treasurer shall pay over to the complainants the proceeds of said sale coming to the levee board of District No. 1, to pay and satisfy the debts due to complainants if sufficient, if not, to be distributed *pro rata* among them.

"That all deeds executed heretofore by the Auditor or Treasurer purporting to convey all such lands, so reported by said commissioner to be in arrear for taxes due Levee District No. 1, and upon which said taxes due District No. 1 have not been collected as required by said act of March 17th, 1871, be decreed to be inoperative and void for want of authority in the Auditor or Treasurer to execute the same, and that the title remains vested in the State of Mississippi, and that all such deeds be cancelled and held of no effect.

"That if the court should hold that lands held by the Liquidating Levee Board were exempt from taxation, then that an accounting be had to ascertain when sufficient taxes had been collected to pay off the valid bonds, if any, of the Liquidating Levee Board, issued prior to March 17th, 1871, and that all lands sold after sufficient had been sold to pay said valid bonds, be decreed illegally sold and sold hereunder. And also ascertain which of the lands claimed by the Liquidating Levee Board had been duly and legally sold thereto. That where lands have been sold or conveyed and all the State, county and other taxes have been

duly paid, except the tax due District No. 1, that upon the payment of such unpaid or illegally paid taxes to District No. 1, and damages, costs, etc., as by the Act of March 17th 1871 provided, or when the taxes due District No. 1 have not been paid by reason of escape from taxation, that the purchaser or those holding in the former case under him, or the owner in the latter case shall receive a deed from the Auditor under the decree, upon the payment of such unpaid or illegally paid taxes in cash, the former payments of State, county and other taxes, if any, being duly credited on the purchase money, or if such former purchaser or those holding under him do not purchase under this decree, then from the purchaser hereunder the whole State and county taxes be collected and the same be returned to the purchaser under the former sale to the extent paid by him."

These alternative prayers may be more clearly stated:

1. Assuming that the lands owned by the Liquidating Levee Board were not exempt from taxation, the complainants claim the right to appropriate them to the payment of their bonds and to sell them in this proceeding.

2. Assuming that the lands owned by the Liquidating Levee Board were exempt from taxation, then complainants ask for an account to ascertain the point of time at which the taxes had been collected or lands had been sold by the Liquidating Levee Board sufficient to pay the valid debts of the Liquidating Levee Board, the objection being in the body of the bill, that certain bonds of this Board had been illegally registered, and that all lands sold to the Liquidating Levee Board after that time should be declared void, and all lands thus illegally sold

should be sold in this proceedings to pay complainants bonds.

3. Where lands have been legally sold and all taxes paid, except the taxes due to District No. 1, then that the purchaser shall pay the latter taxes in cash, be credited with the other taxes and receive a deed from the Auditor under these proceedings. And if the purchaser at a sale under the present proceedings is not the purchaser under the former tax sale, then that out of the bid the State and county taxes paid by the former purchaser shall be returned to him, and the remainder I presume, is to be paid to the complainants on account of their bonds.

It was contended by the complainants that the lands owned by the Liquidating Levee Board were not exempt from taxation, and were chargeable with the taxes of Levee Board No. 1, and subject to sale therefor.

And it is also contended that a portion of the bonds of the Liquidating Levee District No. 1 were illegal in this, that they were issued under an extension of time granted by several special statutes, subsequent to the act of February 13th, 1867, which were not valid statutes for this purpose.

And it is contended by the defendants that the complainants' bonds are all void, that the lands owned by the Liquidating Levee Commissioners were exempt from taxation and are not to be taken in satisfaction of complainants' bonds, and that the defendants' titles are paramount and superior to any claim or equity of the complainants. The defendants also contended that the complainants' remedy by this bill was barred by limitation, and that their claim is stale, and generally that complainants had no claim for any equitable relief, and that their bill is too vague and indefinite in its statements.

Besides these general defences, various other objections to the bill were presented by separate demurrers filed by the different defendants, and which will be stated and considered in this brief and argument.

The demurrers were sustained by the chancellor, and an appeal was taken to the Supreme Court, where the decree sustaining the demurrers and dismissing the bill was affirmed.

The Supreme Court of the State in point of fact considered but one single proposition of law on the appeal, and upon that placed its judgment, viz: that the bonds issued by Levee District No. 1 were *ultra vires* and void.

To that decree the plaintiffs in error obtained the present writ of error upon the ground that a Federal question is involved in the decision of the State Court.

BRIEF AND ARGUMENT.

The million of dollars of bonds issued by the Commissioners of Levee District No. 1, under the provisions of the act of March 17th, 1871, are *ultra vires* and therefore void.

Section nine of this statute provided as its only grant of power in this respect that the Levee Commissioners "may issue the bonds of said board to the amount of one million of dollars, in such sums and denominations not less than one hundred dollars as the board may prescribe."

Acts of 1871, p. 43.

The bonds were clearly contemplated to be issued payable generally in dollars, which meant any kind of currency that was legal tender, but they were in fact made payable exclusively in gold coin.

It is true that the statute does not provide in express

terms that the bonds should be payable in paper currency, but the clear and obvious construction is that they should be so payable, or, expressed in another form, it was not intended that the bonds required to be payable generally in dollars should be payable exclusively in a particular coin.

If the bonds had been made payable on their face in lawful money, or in dollars generally, or in legal tender, they could have been discharged in treasury notes, which were then and are now legal tender.

The proposition may be thus stated, that under a statutory power to issue bonds payable generally in dollars, with the amount expressly limited to one million of dollars, and while bonds thus issued in accordance with the true intent of the act could have been paid in treasury notes, and the aggregate debt thus imposed on the District would have been one million of dollars of the value of the generally circulating medium of the country, which did not in fact include gold dollars at that time, the Commissioners attempted to bind the District to the payment of one million dollars in gold coin, then at a high premium.

The effect was to thus impose a larger debt upon the District than was contemplated or allowed by the statute.

In this connection I will quote in full the opinion of the Supreme Court of the State:

"CAMPBELL, J., delivered the opinion of the court:

When "An act to redeem and protect from overflow from the Mississippi River certain bottom lands herein described," approved March 17th, 1871, was passed and when the bonds embraced in this suit were issued "gold coin" was not the basis of the business of the country. It was money, but of much greater value than the circulating medium, consisting of United

States Treasury notes and national bank notes, of which we take judicial notice, because it is part of the public history known to all the world, and therefore including us. 13 Wallace, 358.

All debts payable in "dollars" generally were, as now, solvable in legal tenders, but an obligation payable in gold coin can be discharged only according to its terms. In authorizing the issuance of bonds for one million of dollars and in the use of the term "money" the Legislature must be supposed to have meant in the act cited that money which constituted the basis of the general business of the country and was a legal tender for the payment of debts. Therefore there was no authority in the act for the issuance of bonds payable in "gold coin," and they were void for want of authority for their issuance. This is a matter of substance involving a departure in a most material feature from the act authorizing bonds to be issued, and rendered them void from the beginning.

This is decisive of this case, and renders unnecessary, if not improper, the consideration of any other question."

The sole and exclusive power to issue the bonds comes out of the special provision of this statute, and it affords a perfect illustration of the case of a special and limited statutory power.

The validity of the execution of the power and consequently the question of the legality of the bonds, can only be considered and tested as of the time of the action of the Board and the time of the issuance of the bonds, and not by the force of any subsequent events. In other words, the bonds at the time of their issuance were either valid or illegal, and the fact, that many years after their issuance, the paper currency of the Government rose to an equality of value with gold coin, can by no legal possibility affect the question

The statement of such a proposition is a solecism. It amounts to this, that the bonds when issued, were to be valid in the event that currency and gold became equal in value, and to be void if paper money remained at a discount. At what time was the test to be applied and the question of their validity to be determined?

Gold and paper money might at one time have become equal in value, and again, Treasury notes might have fallen to a discount. Such are some of the remarkable considerations involved in complainant's proposition, concluding with the *reductio ad absurdum* that whenever paper dollars were at par with gold the bonds were valid, and when at a discount, the bonds were invalid. The court will judicially notice the history of the National finances, and especially the resumption act of Congress, the sole purpose of which was to remedy the depreciation of U. S. Treasury notes and make provision for their redemption. Not that the Treasury notes were to be, or have been redeemed, but by providing for their redemption the legislative scheme was to bring their market value to par with gold. The fundamental assumption of the act of Congress was that the notes were at a discount. It is clear that the court will judicially observe the existence of these facts.

The answer to this argument, made by the learned counsel for the plaintiffs in error, that the proceeds of the bonds derived from their sale were, by the Act of March 17th, 1871, to be invested in bonds of the United States Government, which were themselves payable in gold, when carefully examined, is entirely without force.

The kind of money which the *holders* of the bonds were to receive, and could legally demand from the District, clearly constitutes the sole inquiry in the

case, while the mode of investing the funds of the Board was an entirely distinct matter.

There is no direct provision that the proceeds of the sale of these bonds should be invested in U. S. bonds, but section five of the statute, Acts 1871, p. 53, provides that the *funds of the Board* should be kept invested in the securities of the United States, when not required to pay the bonds and other obligations of the Board.

The funds of the Board consisted not only of the proceeds of these bonds, but of all the annual taxes provided for in the statute. Out of this whole fund, the cost of building the levees was first to be provided. The bonds were to be paid and the surplus was to be invested in Government securities. All of the proceeds of these bonds would not have been invested in the sinking fund securities. Indeed, it is highly improbable that any part of the proceeds of the bonds could have been invested in Government securities, in view of the fact that the proceeds of these bonds constituted the primary fund for the construction of the levees, and would have been required at once for levee work. The taxes provided for were manifestly to be collected in currency, and the whole idea was, that a general surplus of the general fund should not lie idle in the hands of the Commissioners.

As a matter of course, the bonds were to be placed immediately on the market, and the proceeds of their sale were at the outset, necessarily, the first funds that could be utilized for the expense of levee construction. Therefore, in no possible event could more than a very small part of the proceeds of these bonds have been invested in Government securities. It was the annual taxes provided for which naturally constituted the fund out of which a possible surplus was to be invested in Government securities.

The scheme was very simple. The bonds to be issued by the board were to be sold and the proceeds would constitute at once a fund available for constructing the levees. This fund would be consumed in a comparatively short time as the work progressed and was completed. Thus the District would have constructed the levees, and would owe a debt of one million of dollars. The twelve years taxes would then be coming in, and out of these taxes the bonds were to be paid, the repairs of the levees made, and then, any surplus balance on hand was to be kept invested in United States bonds.

In the administration of this scheme, it by no means followed that any part of the proceeds of these bonds could have been invested, as a surplus, in Government securities. And it is entirely illogical to say that because any surplus of the general funds of the Board was to be invested in Government bonds, that the Board was therefore authorized to bind the District in a debt of a million of dollars, payable alone in gold coin.

But again, this answer of the learned counsel is based on the idea that the proceeds of the bonds and and tax money were to be invested in Government securities *payable in gold*. In other words, they erroneously assume that all the U. S. bonds were payable in gold, whereas many of them were currency bonds, payable in currency by express terms, and others were payable in coin and technically and legally payable both in gold and silver coin.

The Commissioners, under the statute of 1871, had the general power to invest in U. S. Government bonds with the discretionery power of selecting the particular class of securities for the investment.

It is not necessary to discuss, or consider, on authority, this question of *ultra vires*. The general principle

a priori that all special and delegated powers must be strictly complied with, can be applied conclusively. It will be observed at once, that the objection is neither refined nor technical, but practical and substantial.

The issuance of bonds, payable in *gold coin*, instead of bonds redeemable in currency, or in legal tender, generally, betrayed ignorance, or a willful disregard of the plain directions of the statute.

Suppose a private agent, with express instructions to execute notes in the name of his principal, payable in currency, had made them payable in *gold*, then at a premium, what would have been thought of the valid execution of the power, as a legal proposition? Suppose the bonds had provided for an interest coupon payable in gold, or suppose the board had issued their obligations under this statute payable in bales of cotton or any other commodity?

In 1871, the difference in value between gold and paper dollars was variable, and as the Board could only collect its taxes in currency, it placed the tax-payers of the district at the continual hazard of the enhancement of the value of gold. Its assets, consisting exclusively of currency, would constantly be required to be converted at a loss into the higher priced gold coin. The Board had no more power to make this special contract for the payment of gold coin, than it had to issue twenty-year bonds.

There is no difference in principle between the cases. The period of time within which the bond is to run, is no more essential than the kind of funds it is to be paid in, or in other words, the maximum amount for which the bonds are to be issued. Here the Legislature limited the amount to one million of currency dollars, while the one million of gold coin dollars, contracted to be paid by the board, created a debt, then

equal in legal tender notes to at least eleven hundred thousand dollars. Attention is called to the principle decided in *Woodruff v. Okolona*, as decisive of the case now under consideration. It was there held that the time of payment could not be disregarded, and that the holders of the bonds were bound by notice of the statute under which they were issued.

57 Miss., 808.

Clearly the complainants must succeed, if at all, upon the strength of their own case. Admitting, for the sake of argument, that the defendants have no legal title to the lands, yet if the complainant's claims are not well founded their bill must be dismissed. Is it not a little remarkable, if these bonds had any real validity, that their owners should have delayed the assertion of their rights for a period of fifteen years, with a full and speedy remedy by mandamus provided in the statute which authorized their issuance. It is difficult to imagine or conjecture a reason why any commissioners of ordinary intelligence, should have violated so plain a statute by making these special gold contracts.

It will be observed that the law forbids the sale of these bonds at a greater discount than 10 per cent. It is not improbable that the Board, anxious to get funds in hand, found that currency bonds could not be sold within the statutory margin and resorted accordingly to the expedient of issuing gold bonds, in the hope of getting a higher price, but in this respect violating the law.

But however this may be as a legal proposition, it is clear that the issuance of these gold bonds was beyond the powers of the Board, and on this ground alone the bill was properly dismissed.

But this is not a Federal question, the whole inquiry simply involves the construction of a State statute

which created a municipal corporation, and it is immaterial whether this was correctly or erroneously decided by the State court.

If, in the opinion of the Court, the precise principle or ground upon which the case was decided by the Supreme Court of the State is not correct, then the defendants rely confidently upon the other grounds of defence set up by the demurrers and upon which the judgment of the State court should be sustained.

The question presented by the writ of error, is not whether the particular reason given by the lower court for its judgment is good or bad, but whether the judgment itself, tested by the whole record, in view of all the defences presented, can be legally sustained.

The general merits of the case, as presented by the bill and demurrer, will accordingly be brought to the attention of the court and fully discussed.

II.

The defendants in error have legal titles derived through the Board of Liquidating Levee Commissioners, which are paramount and superior to any lien or equity claimed by the plaintiffs in error.

In this connection I will briefly state the facts upon which this proposition arises.

In 1858, the original levee district was created. It contracted a large debt for levee purposes, which remained unpaid at the close of the late civil war. In 1867 the creditors generally abated all the accrued interest on their bonds, amounting to about one-third of the entire debt, and accepted new bonds at a low rate of interest, on the trusts and securities provided by the act of February 13th, 1867.

By section one of the statute an annual tax was assessed and levied on all the lands in the district, to continue until all the bonds were paid.

By the second section of the act this tax was declared a tax *in rem* on all the lands without further assessment, and it was provided that sales for delinquent taxes should vest in the purchasers a good and valid title.

By section thirteen all lands purchased by the Liquidating Levee Commissioners at tax sales were to be held as a trust fund for the payment of the bonds, and it was expressly provided that all lands acqured by the Levee Commissioners under this act, as well as all lands which belonged to the original Board of Levee Commissioners created by the act of 1858, "shall be exempt from State taxation for levee purposes or otherwise until the same shall be sold or disposed of by this Board."

And to mark and emphasize with even more distinctness the purpose to exempt these lands from all taxation after the period of redemption had expired and the lands had become absolutely vested in the Board, it was provided that when the owner redeemed he should, as the condition of redemption, pay all the State, county and levee taxes. For during the period allowed for redemption the Board had only a a qualified title. During this period the lands could only be redeemed under the act of 1858, as well as the act of 1867, upon the payment of all accrued taxes. But after the period of redemption had expired the Board could then sell the lands on such terms and for such price as in its discretion and judgment was best for the purposes of the trust. And so section thirteen confers upon the Board the general and unrestricted power of disposing of all lands not redeemed. And section ten gives in the broadest terms general and discretionary powers of selling any and all property and assets belonging to the Board in the execution of the trust, so that the stipulation of section thirteen did exempt from

taxation, general as well as local, all lands owned by the Board after the period of redemption had expired and until such land were sold or disposed of by the Board. When sold the lands went into private ownership and came under the taxing power.

This stipulation was of great value and benefit to the creditors of the Liquidating Levee District and formed one of the most essential terms in the liquidation and readjustment of their claims under the act of 1867.

A large quantity of the lands in the District were wild and uncultivated, and yielding no profits. Generally speaking, the least valuable lands formed the class or grade of lands that became forfeited for taxes and that fell to the absolute ownership of the Board as a fund out of which to pay the bonds of the District. And if during the period when so held by the Board the annual taxes, State, county and levee, had been permitted to accumulate, this security would soon have been consumed for taxes and lost to the creditors. The actual value of this class of lands was often less than the sum of a few years' taxes, and frequently worth not more than one year's tax during the period of this legislation and up to 1881, the date of the sales under the Green decree.

This situation explains the requirement for the payment of all taxes upon a redemption by the owner, and the discretionary and general power of sale given to the Board after the period of redemption had expired. It also explains the great value of the exemption stipulation in the act of February 13th, 1867.

Under this condition of the Delta, large quantities of lands were sold to the Liquidating Levee Board in 1868, 1869 and 1870, and small bodies of land had been previously sold to the original levee board which became vested in the Liquidating Levee Commissioners

A large proportion of these lands were neither redeemed nor sold and were held by the Liquidating Levee Board in default of purchasers until 1881 and 1882, when they were sold under the decree in the Green case, and the proceeds applied to the liquidated bonds paying the entire debt, except a small amount which was paid by the collection of the tax in 1882. Thus the taxes on lands held for the creditors of the Liquidating Levee Board were all paid and the lands were all sold and the trust fully and faithfully executed.

Under a special act of 1884, about $4,000 of the original levee debt created under the act of 1858 was provided for, but this is wholly immaterial to the present inquiry.

During the time when these lands were held by the Liquidating Levee Board in trust for its creditors the statute of March 17th, 1871, was passed creating Levee Board No. 1, with the powers already explained in the statement of the case. There was a tax assessed by this act on the lands in District No. 1. Tax sales were provided for and the Board was authorized to purchase at tax sales, and so the Board of District No. 1 went into operation.

During the years from 1872 to 1876 inclusive, large quantities of land were sold to this Board, including some of the lands owned by the Liquidating Levee Board.

During all this time the Liquidating Levee Board collected its taxes. All the valuable lands in the District paid all the taxes assessed against them and the wild and low priced land had been forfeited to the Liquidating Levee Board as delinquent.

It is quite clear that it was no part of the purpose of the act of March 7th, 1871, to defeat or impair the scheme provided by the act of February 13th, 1867, for

the payment of the liquidated debt. If the lands could bear the double taxation, then both these taxes were to be collected from the owners. But where the value of the lands could not bear the double burden, and the lands were forfeited to the Liquidating Levee Board then they were not to be charged with any other taxes while thus held by said Board.

These lands, occupying the *status* of a trust fund under the exemption guaranty of the Act of February 13th, 1867, could not be sold by the Commissioners of District No. 1. Such sales therefore conferred no title whatever, nor did such sales affect, in any manner, the title of the Liquidating Levee Commissioners.

It follows, therefore, that the Liquidating Levee Commissioners held these lands free of incumbrances, not charged with any lien or equity in favor of the creditors of District No. 1, with the unquestionable right to sell and convey the same, and that the defendants in error acquired by their purchase from the Liquidating Levee Board these paramount and unincumbered titles.

The reply that was offered by the learned counsel for the plaintiffs in error in the Supreme Court of the State, and which I presume will be repeated here is, that the exemption from taxation granted to the creditors of the Liquidating Levee Board by the statute of February 13th, 1867, is not a contract, its therefore repealable, and was repealed by implication by the statute of March 7th, 1871.

This reply is not sound, and it will be seen upon examination, that the exemption is a contract stipulation protected by the Federal Constitution, that it is accordingly irrepealable, and moreover, that it was not the purpose of the Legislature to repeal this exemption by the statute of March 7th, 1871.

It will be observed that the exemption granted by the act of 1867 applied in express terms to all general taxation, and as well to *levee taxes or local assessments for local purposes*. There is no room for construction on this point. So that the case presented is one of a contract exemption from both general taxation and local taxes or assessments.

Is not this contract protected by the Federal Constitution?

The whole arrangement effected by the statute of 1867 was based upon a valuable and adequate consideration. The creditors abated about one-third of their debts, extended the time of payment, and accepted a decreased rate of interest, for the securities provided by the act, one of the most valuable and important, being this exemption from taxation.

There can be no doubt that an exemption granted as a privilege, *ex-gratia*, may be recalled. It is equally clear that when it becomes an essential part of a contract resting upon a consideration, it is a contract protected by the Constitution.

In *McGee v. Mathis*, the State of Arkansas authorized the issuance of transferable land scrip and its receipt from locators of land in payment, and as an inducement to purchasers, exempted the land from taxation for ten years. This exemption was afterwards repealed and a levee tax laid upon the land. It was held by this Court that "the contract of the State was to convey the land for the scrip, and to refrain from taxation for the time specified. Every piece of scrip was a contract between the State and the original holder and his assigns. Now what was the effect of that contract when made? Did it not bind the State to receive the scrip in payment for swamp land, exempted for a limited time from taxation? The scrip, if not receivable

for lands, was worthless. To annul the quality of receivability was to annul the contract. But the exemption of the lands for which it was receivable from taxation, was a principal element in its value; and repeal of the exemption was the destruction of this element of value. This was clearly an impairment of the contract. The State could no more change the terms of the contract by changing the stipulated character of the land to be conveyed in satisfaction of the scrip as to liability to taxation, than it could abrogate the contract altogether by refusing to receive the scrip at all in payment for land.

We are constrained to regard the repeal of the exemption act, so far as it concerns lands paid for, either before or after the repeal, by scrip issued and paid out before repeal, as impairing the contract of the State with the holders of the scrip."

The court also decided that the exemption extended to local assessments, though the law did not in express terms so declare, this construction resting upon the general intendment of the statute.

McGee v. Mathis, 4 Wall. 143.

In *Home of the Friendless v. Rouse*, involving the precise question, this Court used the following language:

"The validity of this contract is questioned at the bar on the ground that the Legislature had no authority to grant away the power of taxation. The answer to this position is, that the question is no longer open for argument here, for it is settled by the repeated adjndications of this court, that a State may by contract based on a consideration, exempt the property of an individual or corporation from taxation, either for a specified period or permanently. And it is equally well settled that the exemption is presumed to be on

sufficient consideration, and binds the State, if the charter containing it is accepted."

Home of the Friendless v. Rouse, 8 Wall, 430.

Speaking of a charter exemption from taxation, the Court said in *Wilmington Railroad v. Reid*: "It has been so often decided by this court that a charter of incorporation granted by a State creates a contract between the State and the corporators, which the State cannot violate, that it would be a work of superogation to repeat the reasons on which the argument is founded."

Wilmington Railroad v. Reid, 13 Wall., 266.

The Supreme Court of Mississippi in *Gibbs v. Green*, said: "If anything is settled in American law, the act of 1867 became a contract between the State of Mississippi and the authorities of the levee district on the one hand and the holders of the new bonds on the other, which it was not competent for either party thereafter materially to modify without the consent of the other." * * * "The tax, and the lands forfeited thereunder, alike became a fund pledged by the act for the redemption of the new bonds; and it was thereafter no more competent for the Legislature to repeal the tax or divert the land than it was for them in express terms to repudiate the bonds. Among the countless cases in support of this well settled proposition we cite only two which are strikingly illustrative of the principles upon which it rests. *Von Hoffman v. Quincy, 4 Wall., 535; McGee v. Mathis, 4 Wall., 143.* The doctrine deducible from these and other cases is that legislative contracts, like that embraced in the act of 1867, are inviolable."

Gibbs v. Green, 54 Miss., 609.

The scope of this decision of the Mississippi court is broad enough to embrace the exemption question. It

evidently was not the intention to exclude it, and this proposition is embraced in the language that it was incompetent "for the Legislature to repeal the tax or divert the land," especially in view of the citation of *McGee v. Mathis* which involved the precise question.

The proposition is too clear for argument that the exemption clause of the act of 1867, is a contract, protected by the Federal Constitution, and irrepealable.

But it is only just to say that the Legislature did not intend by the act of 1871 to repeal this special exemption of 1867.

There is no express repeal. Where a statute is intended to be repealed there is generally a repealing clause, or express words of repeal.

"The leaning of the courts is so strong against repealing the positive provisions of a former statute by construction, as almost to establish the doctrine of "no repeal by implication."

Potter's Dwarris, p. 154.

This is too strong a statement of the rule, but it was accurately said by Justice Swayne in *McCool v. Smith* that a "repeal by implication is not favored; the leaning of the courts is against the doctrine, if it be possible to reconcile the two acts of the Legislature together."

McCool v. Smith, 1 Black., U. S., 470.

To repeal a statute by implication, there must be such a positive repugnancy and antagonism between the provisions of the new law and the old that they cannot stand together or be consistently reconciled.

Wood v. U. S., 16 Pet., 342.

Hartford v. U. S., 8 Cranch, 109.

"An act of Parliament may be repealed by the express words of a subsequent statute, or by necessary irresistible implication."

Potter's Dwarris, p. 154.

"And the repugnancy must exist 'in the very matter.'"

Ibid, p. 154.

This brings the rule to the nicest refinement. There is not the slightest conflict between these statutes in respect to the "very matter" of the exemption.

The first statute made a special contract in which a temporary exemption from taxes is granted in respect to particular lands while held in trust for the creditors. The second statute does not relate to the subject of this special exemption from taxation, but provides for a tax on the lands of the District generally. It undertakes no repeal of pre-existing exemptions, and upon every principle of correct construction its purpose simply was to place a tax on all the lands in the District legally subject to taxation. Thus, the special and limited exemption would be preserved, and the taxes laid by the second act would be enforced against the lands in the District generally, subject to this special exemption.

There is no repugnancy between the statutes. But such a construction would impair the obligation of the contract of 1867, and would render the statute of 1871 unconstitutional to that extent, and every intendment and presumtion should be made, rather than impute such unlawful purpose to the Legislature. Every presumption will be indulged rather than give a statute an unconstitutional operation.

It is very evident that the Legislature in 1871 did not have in view the repeal of this exemption, and was not attempting to accomplish by indirection what it could not effect by direct repeal.

I will further suggest that the general purpose indicated by section twenty-seven of the Act of March 17th, 1871, was to preserve all pre-existing exemptions.

The language is "That no lands held in the United States, or this State, in trust or otherwise, nor any Chickasaw or other school land, if exempt from taxation, shall constitute part of the Levee District established by this Act; but such of said lands as are situated within the general bonndaries of said Levee District, as fixed by this Act, shall become and constitute part of said Levee District as soon as they become subject by law to taxation."

The lands held in trust for the creditors of the Liquidating Levee board, and specially exempted from taxation, clearly come within the general scope of the language employed. The technical title, it is true, was not in the State, but it was in a public Board of Commissioners, created by and acting for the State, and they were high State officials, holding a trust in behalf of these public creditors. Substantially, the State was executing and administering this trust. The title was subject to the control of the State, and it did abolish the original Commissioners and place the title in the Auditor and Treasurer of the State. This title was held by the agents of the State, executing a public trust under the legislative direction of the State, and the fact that the naked legal title was not in the State is wholly unimportant and immaterial.

From these views it follows that the titles acquired by the Liquidating Levee Commissioners in 1868, 1869 and 1870 were paramount, and the sales made to the Commissioners of District No. 1, while these lands were exempt from all taxation, were invalid and conferred no right or title whatever. This claim of the plaintiffs in error must therefore fail.

In this connection another phase of the bill will be noticed. It is insisted that a part of the debt liquidated under the statute of 1867 was invalid on the

ground that the Legislature had no power by subsequent legislation to extend the time for the surrender of the old scrip and the issuance of the new bonds. That when enough lands had been purchased or sold by the Liquidating Levee Board to pay the valid part of the debt, then all sales made thereafter were invalid, and that all lands thus sold should be appropriated to the payment of complainants bonds.

The statutes of May 13th, 1871, and April 5th, 1872, extended the period fixed by the act of February 13th, 1867 for the issuance of the new bonds under the compromise. And the contention is that all the old bonds not presented within the time prescribed by the act of 1867 were barred by the terms of section five of that act, and bonds issued under the two subsequent statutes are invalid. This involves the curious idea that the Legislature had no power to extend the time for the registration of the old bonds and the issuance of the new bonds. It is not contended that the bonds issued under the statute of 1858 were barred by any general statute of limitations, for they were not.

By section fourteen of the act of 1858, the bonds could not mature earlier than January 1st, 1863. The general statute of limitations was suspended in this State in 1862, and began to run in 1867, so that none of the bonds could have been barred earlier than 1874, before which time the old bonds were surrendered, and new bonds accepted in their place.

It was clearly competent and proper for the legislature to extend the time for the acceptance of the compromise offered the bond holders by the act of 1867. Large concessions were asked of the bond holders and it was greatly to the interests of the District that they should come into the new settlement. They could not be forced into the measure, and they could have stood

on their original rights and demanded payment in full of their claims.

As it was within the power of the Legislature at any time to compromise this debt with the consent of the creditors, it is impossible to perceive upon what principle the Legislature could not renew the offer made in 1867. The entire statute of 1867 might have been re-enacted for the benefit of those bond holders who had failed to accept the compromise.

As it is, each of the subsequent statutes is, in effect, a renewal of the offer of compromise proposed by the act of 1867. This objection cannot possibly invalidate any part of the bonds issued under that act.

But even conceding that any part of these bonds were invalid, it would by no means follow that any of the sales to the Liquidating Levee Commissioners were void or invalid. The validity of the sales did not depend upon the question whether a part of the bonds had been irregularly issued, a large portion of the debt being valid. It was the duty of the Commissioners to purchase the lands in default of bidders at the tax sales. And it was impossible to determine when sufficient lands had been purchased to pay what is supposed, by the learned counsel, to be the valid bonds. There were no bidders at the tax sales, and the Commissioners held the lands in default of purchasers until 1881 and 1882. Before that time the lands could not be sold *at any price*. No approximate estimate could be made of the value of the lands they were acquiring; they could not possibly know when they had purchased lands enough to pay the bonds. There is no averment that sufficient lands had been sold to pay the bonds conceded to be valid. There can be no force in this objection.

The bill contains a vague assertion that the Liqui-

dating Levee Commissioners had no power to issue the bonds, but I presume that this is referable to the specific objections just noticed.

Neither the validity of the original bonds issued under the acts of 1858, nor of those issued under the statute of 1867 was ever questioned in any quarter. They passed judicial scrutiny in *Green vs. Gibbs*, a case in which all the necessary parties were present, and I cannot perceive upon what legal principle there can be a doubt of their validity.

It will be observed that the bill rests upon the theory that the lands of the Liquidating Levee Board were not exempt from the taxes of District No. 1, and were burdened with the latter taxes from 1871 down to the expiration of the twelve years

This is the whole contention in this respect. In view of this, it is clear that the bill does not intend to convey the idea that no District No. 1 taxes whatever were paid to the Auditor. It is distinctly claimed by the bill that the exemption was a mere privilege subject to recall, and was repealed in 1871, "that the lands held by the Liquidating Levee Board were subject to taxation under the act of March, 1871, and the rights of the Levee Board of District No. 1 were paramount to the right of the Liquidating Levee Board thereto" * * "and that said Railroad Company and said Delta and Pine Land Company and said Burroughs and all other persons by its acquisition of said title charged with taxes undertook to pay all taxes and charges," * * "and it was illegal for the Auditor to make such sale without collecting as the purchase price all taxes due under said act of March 17th, 1871 on said lands."

The general averment that the Auditor had sold lands belonging to Levee Board No. 1 without collecting taxes back of 1874, treating the taxes prior to that time as abated by the act of 1875, is immaterial as this does

not relate to the lands claimed by these defendants.

The basis upon which the deeds were executed under the act of March, 1884, was that up to the purchase under the Green decree in 1881 and 1882, these lands of the Liquidating Levee Board were exempt from all taxation, a construction universally accepted in administering this trust. And so the exemption stood for the payment of the District No. 1 taxes during the years it was in force.

The contention is not that no taxes were collected by the Auditor, but that as matter of law, the exemption was observed and allowed by the Auditor, during the period while it operated and according to the theory of the bill the taxes of District No. 1 should have been exacted during the whole period of the exemption. None of the State or county taxes were collected by the State during the time when the lands were held by the Liquidating Levee Board, and the estimate of taxes was made from the beginning of the private ownership springing from the sales in 1881 and 1882 under the Green decree, when the lands came back under the taxing power.

The question is thus clearly presented, whether the lands were exempt while held in trust for the creditors of the Liquidating Levee Board. And upon this it is respectfully and confidently insisted that the exemption was not only irrevocable as a contract, but the Legislature of the State never intended to recall it.

In concluding this subject, some other general features of the levee statutes will be noticed.

1. By the statute of February 13th, 1867, the lands owned by the Liquidating Levee Commissioners were exempt *from all taxation*, general and local, and could not be sold by the State or District No. 1, and such lands were a trust fund for the creditors of the Liquidating Levee Board.

2. On the other hand, by the statute of March 17th, 1871, lands held by the Board of District No. 1 were *not exempt* from State, county and liquidating levee taxes, but during the time they were thus held by the Commissioners of District No. 1, the collection of the State, county and liquidating levee taxes was merely suspended.

3. When the lands of the Liquidating Levee Board were sold, the entire proceeds of the sales were dedicated and applied to its bonded debt, and the Board was not accountable to the State, counties or District No 1 for any taxes whatever. In a word, such lands were a trust fund exclusively for its creditors and exempt from all taxation.

4. Lands purchased by the Board of District No. 1, by the terms of the statute of March 17th, 1871, were not a trust fund dedicated to the creditors of District No. 1. The twelve years taxes charged on the lands were available to those creditors, but the lands did not belong to them, and lands thus held were charged with all accruing State, county and liquidating levee taxes. They could only be sold by the Board of District No. 1 for all those accumulated taxes, and out of the proceeds of sale, only the District No. 1 taxes were to go to the Board of that District.

5. The statute of 1876 placed the title to lands legally owned by the Commissioners of District No. 1 in the State, and made the bonds and coupons of that District receivable in purchases and redememptions for State and county, as well as District No. 1 taxes. And the constitutionality of this law is vindicated by the considerations, that the lands did not belong to the District No. 1 creditors as a trust fund. The taxes due to District No. 1 were preserved, and it was a benefit and not an injury to creditors that the bonds and

coupons of District No. 1 were made receivable, not only for District No. 1 taxes, as provided by the statute of March 17th, 1871, but for State and county taxes as well.

In connection with the last two propositions, I refer to the case of *Shotwell v. Railroad Company*, recently decided by the Supreme Court of the State, and not yet reported.

6. The statute of 1876, permitting the bonds and coupons of District No. 1 to be received for the State and county taxes, did not validate those bonds or impose them as a debt on the District. This was argued in the Supreme Court of the State in the present case, and disregarded by the Court. Certainly the construction of the subsequent statute of 1876 cannot be a Federal question.

66 Miss., 304.

These conclusions follow :

1. The Commissioners of District No. 1 acquired no title by the tax sales to any lands held at the time by the Liquidating Levee Commissioners and now owned by the defendants. The bill, so far as it seeks to appropriate these lands to the complainants' bonds, must fail.

2. The bill cannot be maintained for the collection of taxes during the period of the exemption, for the protection afforded by the exemption was not and could not have been withdrawn.

3. This leaves the complainant without any further claim against the defendants who acquired the Liquidating Levee Board titles.

III.

The bonds exhibited with the complainants bill are barred by the six, seven and ten years statute of limitation.

The bill was filed and process issued on August 17th 1888. The first bonds falling due, matured January 1st 1872 and the last installment became due on January 1st 1881.

Before the commencement of this suit, a period of sixteen years, seven months and seventeen days had run against the first installment, and a period of seven years seven months and seventeen days had run against the bonds falling due in 1881.

By a statute of Mississippi, on a demurrer to a bill in equity, the exhibits to the bill are treated as part of the bill and for all the purposes of the demurrer are considered as if incorporated in the bill itself.

Code 1880, §1869.

The defence of the statute of limitations is available in equity by demurrer where the bill shows that the bar has attached.

Nevitt v. Bacon, 3 George, 212.
Dickson v. Miller, 11 S. & M., 594.
Mathews v. Sontheimer, 10 George, 114.

Exhibit "A" to the bill shows the date and maturity of each bond claimed by the complainants. This, together with the filing of the bill and issuance of original process showing the commencement of the suit, brings to view the facts showing the bar of the statute.

By the Code of 1857 the time allowed for suits on sealed instruments was seven years.

Code 1857, p. 400, Art. 6.

The Code of 1871 failed to provide any limitation on contracts under seal, an omission that was cured by a statute passed in 1873.

Acts 1873, p. 43.

The Code of 1880 abolished all distinctions between parol contracts and contracts under seal, and applied a six years period of limitation to all written contracts.

Code 1880, §2669.

It is generally provided that the several periods of limitation prescribed by the Code of 1880 may be pleaded wherever the bar becomes complete under its operation, and the former statutes were not repealed but continued in force in respect to all pre-existing causes of action

Code 1880, §2692.

The effect was that where the bar attached under both statutes, either could be pleaded; and where it had accrued under the latter, then the latter could be pleaded.

In the case at bar it is immaterial whether the six or seven years statute is applied.

The provisions of the statutes cited apply in terms to actions at law, but the statutes of limitation bar the remedy in equity by the same period of time that would bar the remedy at law in respect to the enforcement of the obligation in equity, or the foreclosure of any mortgage or lien, or security given for the debt.

Code 1880, §2667.
Code 1871, §2150.

These statutes also declare that when the remedy at law is barred, the remedy in equity shall also be barred. But they have another distinct operation in making the period of limitation at law, the rule of limitation in equity.

These codes each placed a limitation of ten years on equitable remedies for the enforcement of trusts not cognizable at common law.

Code 1871, §2175.
Code 1880, §2696.

And again, the following provision is common to both codes:

"No person claiming any land in equity, shall bring any suit to recover the same, but within the period during which, by virtue of the proceeding hereinbefore

contained, he might have made an entry, or brought an action to recover the same, if he had been entitled at law to such estate, interest or right in or to the same, as he shall claim therein in equity."

Code 1871, §2148.
Code 1880, §2665.

This limitation at law is ten years for real actions.

Code 1871, §2147.
Code 1880, §2664.

And bills for relief in cases of trust, and in cases not provided for, are barred in ten years.

Code 1871, §2175.
Code 1880, §2696.

The remedy by mandamus must be brought in six years.

Code 1880, §2669.

These several propositions are now submitted to the court.

1. An action at law on the bonds was barred by the periods of six and seven years when the present bill was filed.

2. The bill, as a remedy for the recovery of the lands of the defendants, on the claim of equitable title made by the complainants, is barred by the ten years statute of limitation.

The character of the bill in this respect is, that the Commissioners of District No. 1, held these lands by title paramount in trust for the complainants. This is an assertion of an equitable title to, and ownership of the lands, and the purpose is to recover these lands, establish this claim as the superior title, and apply the lands to the payment of the bonds.

This remedy falls clearly within sections 2148 of the Code of 1871, and 2675 of the Code of 1880.

The titles of the Liquidating Levee Commissioners

began in 1868, 1869 and 1870. The sales of the lands of the Liquidating Levee Board, at which the Commissioners for District No. 1 purchased, were from 1872 to 1876, inclusive. The time for the sales was on the second Monday of January, allowing the two years for redemption, the ten years limitation began to run against the complainants, and in favor of the Liquidating Levee Board, on January 1st, 1878, and the bar of ten years had become complete before the bill was filed.

But a bill to recover these lands from the Liquidating Levee Board could have been filed at any time after the sales to the Board of District, No. 1. The latter Board or its creditors could have filed such a bill to settle the title to the lands.

The statutes last quoted contain the distinct and independent rule that the *period of limitation at law* shall apply to a proceeding in equity to recover any equitable interest in land.

It is clear that the right of entry, as well as the action at law, was barred if this had been a legal estate claimed by the complainant. And the bar against the equitable remedy for the recovery of this equitable interest in the land is also complete.

The Liquidating Levee Board, and its creditors, stood upon their own independent title paramount, and are entitled to be protected by these statutes. The bill is one essentially for the recovery of these lands on the contention that the complainants have the superior equitable title. The precise point of inquiry is whether the titles of the Liquidating Levee creditors were defeated by the tax sales to District No. 1, and this marks the character of the controversy, and shows clearly the application of this statute of limitation.

3. Considered as a proceeding to enforce a lien upon or a trust in the lands, as a security for the bonds, the

bill is barred by section 2156 of the Code of 1871, and section 2667 of the Code of 1880.

These statutes apply to the equitable remedy tha *same period of limitation* that governs the action at law on the debt.

The Liquidating Levee Board and its creditors stood all the while on their own independent rights, with constant assertion of title paramount. And a bill of this character to enforce the lien claimed by the complainants could at any time have been presented against them, and accordingly this statute has continuously run against the claim now asserted.

It is not the case of a proceeding against the debtor where the debt has been kept alive, but a suit against third parties to subject their property claimed by them under an independent and adversary title. In thisview it is immaterial whether the debt *per se* is barred or not.

3. Considered as a proceeding in equity to collect taxes, a proceeding by *mandamus* was barred by the six years limitation when the bill was filed.

Code 1880, §2669.

So that under the operation of section 2695, Code 1880, in respect to concurrent remedies at law and in equity, this proceeding is barred.

But in the absence of a special statute directly affecting the equitable remedy, courts of equity apply the statutory period, not so much by way of analogy as in obedience to the statute.

Hovendon v. Lord Annesly, 2 Sch. & Lef., 607.
Badger v. Badger, 2 Wall., 94.
Mitchell v. Woodson, 8 George, Miss., 567.
Goff v. Robins, 4 George, Miss., 153.

It is now respectfully insisted that upon all of these different statutes this proceeding is barred by limitation.

IV.

If the foregoing views are correct, it follows that the bill cannot be maintained as a proceeding for the recovery of the lands of the defendants on the complainants' claim of title paramount; nor to charge them in the hands of the defendants, with a trust as security for the payment of the bonds of the complainants. Accordingly in respect to the defendants who purchased the Liquidating Levee titles, it is narrowed to a proceeding in equity for the collection of taxes.

The jurisdiction for this purpose does not exist in a court of equity. The proper remedy is mandamus.

This was specially given to the bond holders of District No. 1 by the tenth section of the act of March 17th. 1871, as a distinct and independent remedy. They were not required in the first instance to obtain judgments at law upon their bonds, but were entitled at once to the writ of mandamus on failure of the proper officials to collect the tax.

On complainants' theory of their rights, the remedy by mandamus was an unembarrassed one. The tax was laid by the statute of 1881, and it was a legislative assessment. The sheriff and tax collector of each county in the district was authorized to collect the taxes and sell the lands for delinquent taxes.

This court speaking of the precise question now presented, said, in *Walker v. City of Muscatine*, "We are of opinion the complainants have mistaken the appropriate remedy in the case, which was by writ of mandamus from the Circuit Court in which the judgment was rendered against the defendants. The writ affords a full and adequate remedy at law. There are numerous recent cases in this court on the subject."

Walker vs. City of Muscatine, 6 Wall 482.

The subsequent case of *Rees vs. City of Watertown* is a strong illustration of the rule which excludes the jurisdiction of a court of equity in this class of cases. It was there said by the court, under exceptional circumstances, where repeated writs of mandamus had proved ineffectual because of the resignation of the municipal officers charged with the duty of collecting the tax, "The appropriate remedy of the plaintiff was and is a writ of mandamus. This may be repeated as often as the occasion requires. It is a judicial writ, a part of a recognized course of legal proceedings. In the present case it has thus far been unavailing and the prospects of its future success is, perhaps, not flattering. However this may be, we are aware of no authority in this court to appoint its own officers to execute the duty thus neglected by the city in a case like the present." * * * "Entertaining the opinion that the plaintiff has been unreasonably obstructed in the pursuit of his legal remedies, we should be quite willing to give him the aid requested if the law permitted it. We cannot, however find authority for so doing, and we acquiesce in the conclusion of the court below that the bill should be dismissed."

Rees v. City of Watertown, 19 Wall, 124.

In *Heine v. The Levee Commissioners*, following the two cases just cited, the principle was distinctly announced, as stated in the head note, "that the power to levy and collect taxes is a legislative function in this country and does not belong to a court of equity, and can only be enforced by a court of law, through the officers authorized by the Legislature to levy the taxes, if a suit of mandamus is appropriate to that purpose."

Heine v. The Levee Commissioners, 19 Wall, 655.

In the case at bar, the taxes levied by the Act of

1871 are *in rem*, but they did not lose thereby their essential character as taxes, and they were collectable and enforcible by the same official machinery as all other taxes. This consideration, therefore, that they were thus a charge or lien on the lands could not invest the courts of equity with the legislative or governmental function of collecting taxes.

The lands of defendants came into private ownership in 1881 and 1882, and came within the general taxing power of the government. The defendants, after that time, as citizens and tax payers, would have owed all taxes legally accruing on the lands. If this included any taxes accruing and due to District No. 1, they were collectible in the same manner as all other taxes. And if the proper officials failed to collect, then the remedy by *mandamus* was available to the complainants as in ali ordinary cases.

There is nothing shown by the bill that obstructed the remedy at law. The State had no title to the lands so far as the bill shows, for the abatement sales of 1875 conferred no title whatever on the State.

The lands in the hands of the Liquidating Levee Board were exempt from all taxation, and therefore any sales by the State in 1875 were simply null and void as violative of the exemption stipulation of the act of February 13th, 1867. So that the purchases under the Green decree in 1881 brought the lands again under the taxing power. And if any tax accrued subsequently to the Board of District No. 1, it could have been enforced as other taxes by the tax collectors, and upon their failure to act, the complainants could have had a writ of mandamus.

In any possible view of the case, the lands passed fully into private ownership in 1885, when the State made quit-claim deeds to the defendants under the act of 1884, and if there were any valid and uncollected

taxes standing then against the defendants' lands they could have been collected by the proper officials or by the writ of mandamus at the instance of these complainants. If for any reason such tax was not collectible by those methods it is difficult to perceive why the same reason should not prevail in respect to the collection of the tax by a court of equity.

Judge Dillon in his work on corporations cites one case, *McInerny v. Reed*, 23 *Iowa*, where a tax was collected by a court of equity. There the charter of the city conferred the power to "levy and collect" a special tax which was declared to be a lien upon the real estate upon which it was assessed. But no mode of collection was provided, and no power to collect by sale existed. And it was accordingly held that the city could maintain a bill for the enforcement of the tax. The ground of the decision is that a bare authority was given to collect the tax, and no remedy for the collection was provided, and because of this omission of the law, a court of equity would supply this deficiency. The whole case proceeded on the ground of the absence of any statutory mode for the collection of the tax, and but for this peculiar feature the jurisdiction would not have been sustained. Where there is an ample and complete statutory method there can be no jurisdiction in equity.

In the case at bar, the most effective and adequate mode of collecting these taxes was provided by the statute of March 17th, 1871. All the machinery was ample and complete; and moreover, upon failure of the officials to act, the special remedy by mandamus was given to the bondholders. Certainly the creditors were armed with ample power to have the lands sold for taxes. A court of equity could do no more. The remedies were, therefore, as adequate and effectual as any known to a court of equity.

The general rule is thus stated by Judge Dillon:

"If the charter gives to a municipal corporation a specific and complete remedy for the collection of taxes, as by a distress and sale of property, this will ordinarily be regarded as excluding by implication the right to resort to any other mode of enforcing the tax; but where the power to levy the tax is plainly given, the right to collect by suit should not be taken to be impliedly denied, unless the intention of the Legislature, that the special mode prescribed should be the *only* mode, appears with reasonable certainty. If the specific remedy is full and adequate, such an intention of the law-maker would be more readily deduced than it would under other circumstances."

2 Dillon's Mun. Cor., 1st. Ed., § 663; 3d. Ed., § 815.

This contains a full and accurate statement of the principle of construction.

Where a new and special tax is created, and full and adequate special remedies are provided for its enforcement by the same statute, the construction is irresistible that these special methods are to be exclusive.

This has been declared to be the law by the Supreme Court of Mississippi, in *The State v. Piazza*, decided in 1889. The court said: "If the tax had been imposed, or the liability incurred, and no method had been provided by law for its collection, it might well be held that the Legislature contemplated its enforcement by the ordinary remedies, and from necessity resort might be had to appropriate legal remedies. The doctrine of the maxim, *ubi jus, ubi remedium*, would then apply. But that is not the case before us. On the contrary, the statute which creates the tax or liability provides special remedies for its collection. In such case, it is generally held that the remedy pro-

vided by statute is exclusive, and that an action does does not lie for the recovery of the tax.

The State v. Piazza, 66 Miss., 429.

This doctrine received the sanction of this Court in

Lane County v. Oregon, 7 Wall., 80.

Judge Cooley, in his work on taxation, says: "It has been shown that taxes are not debts in the ordinary acceptation of the term, and that the statutory measures are to be resorted to for their collection. Generally no others are admissible. But the remedy by suit may be given by statute either directly or by implication. If no specific remedy is expressly given, or only an imperfect or inadequate one, the presumption that a remedy by suit was intended is but reasonable."

Cooley on Taxation, p. 300.

I do not apply this jurisdictional objection to that aspect of the bill in which it claims by title paramount the lands purchased by the Board of District No. 1 as a trust fund for the payment of the bonds described in the bill. That is a wholly distinct matter.

But I most respectfully insist that there is no jurisdiction whatever in a court of equity to collect taxes in any case of this character.

The bill mainly proceeds on the theory that the complainants can treat their lands as a trust fund for the payment of these bonds, and places this equitable ownership on the tax sales made to the Commissoners of Levee District No. 1. This is the main contention, and the position of the complainants in this respect has already been shown to be untenable.

In every other aspect, so far as these defendants are sought to be affected, the bill is substantially and in effect a proceeding to collect taxes supposed to be due to Levee Board No. 1, through a Commissioner or Master in Chancery.

V.

Another minor phase of the bill already alluded to, will be now more particularly noticed.

There is a prayer that an accounting be had in this proceeding to ascertain when sufficient taxes had been collected and sufficient lands sold to pay the *valid bonds* of the Liquidating Levee Board, and to have all lands sold thereafter to the Liquidating Levee Board, applied in this proceeding to the payment of complainants' bonds, and to ascertain "which of the lands claimed by the Liquidating Levee Board had been duly and legally sold thereto."

These positions are readily answered.

1. There is no averment in the bill that enough taxes had been collected, or sufficient lands sold by the Liquidating Levee Board to pay all of the new bonds issued under the compromise act of 1867. On the contrary it appears from the whole bill that when the proceedings in the Green case were had, a large amount of those bonds were outstanding and unpaid. The theory advanced by the bill is that all the new bonds issued under the extension of time provided by the Legislature were invalid, and the prayer for this accounting and inquiry is based on this idea alone.

It is no where alleged in the bill that sufficient taxes had been collected or lands sold to pay that portion of the debt conceded to be valid. All these are matters of public record and readily accessible to the complainants, and the accounting asked is purely tentative or experimental.

The correct legal answer is that the ground relied upon could not possibly have invalidated the bonds.

If the bar of the general statute of limitations had attached to the original bonds before the statutes subsequent to the act of 1867 were passed, there would

then be presented the question of the power of the Legislature to remove the bar.

But none of the original bonds were barred by limitation in 1871 and 1873 when the statutes were passed extending the time for the issuance of the new bonds, and it was clearly competent for the Legislature to offer the extension to the bondholders.

2. The prayer for an accounting to ascertain which of the lands claimed by the Liquidating Levee Board had been "legally and duly sold" at tax sales, has no averments of fact in the bill to rest upon.

This may have been intended by the pleader to mean simply an illegality in the tax sales arising out of the assumption that part of the bonds were invalid, and that taxes enough may have been collected to pay the valid bonds according to the theory of the bill. If so it has been already answered.

If it is intended to imply that there was intrinsic irregularities in the tax sale proceedings which would invalidate the titles of the Liquidating Levee Board, then the reply is, that there is no averment of that character in the bill, and no irregularity or defect whatever in any of the sales as indicated or suggested by the bill.

In this connection the attention of the court is invited to the laws of Mississippi for the security and protection of these tax titles.

By the sixth section of the act of December 2d, 1858, these sales were made *prima facie* valid, and it was declared that the deed of the tax collector "shall be taken and received in any court of justice as vesting a perfect title in the purchaser, and shall be evidence that the title of the owner as well as the claim of all persons interested therein is thenceforward vested in the purchaser, and shall be *prima facie* evidence that the land was subject to the tax for the non-pay-

ment of which the same was sold, and that all the prerequisites of said sale had been complied with."

Acts of 1858, *p.* 36.

It was expressly provided by the act of February 10th, 1860, that these sales should not be impeached for any cause except, "fraud or mistake in the assessment or sale, or upon proof that the tax for which the same were sold had been paid prior to such sale." And it was further declared, that "no suit to set aside any title acquired under such sale, shall be brought unless within five years from the date of the sale."

Acts of 1859, § 7, *p.* 216.

And again, by the statute of April 10th, 1873, it was provided that upon the expiration of five years from the sale for levee taxes, no evidence or testimony to invalidate the sale shall be entertained by any court of law or equity, except in cases of fraud."

Acts of 1873, § 5, *p.* 153.

The statute of 1860 has been expressly held by the Supreme Court of the State to embrace and apply to levee tax sales.

Belcher v. Mhoon, *57 Miss.*, 613.
Green v. Williams, *58 Miss.*, *752*.
Metcalf v. Perry, *66 Miss.*, *68*.
Sigman v. Lundy, *Ibid*, *529*.

This limitation of five years is made a special ground of objection in all the demurrers filed to the bill.

Finally, the statute of March 2nd, 1888, cures all iregularities in any of these liquidating levee tax sales, and provides that they should not be impeached for any cause "except that the tax for which said land was sold had been paid."

Acts 1888, *p. 40*-

The general doctrine is well settled that the Legisla.